

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF IRVINE
One Civic Center Plaza
P.O. Box 19575
Irvine, CA 92623-9575
Attn: City Clerk

(Space Above this Line is for Recorder's Use Only)

This Development Agreement is recorded at the request
and for the benefit of the City of Irvine and is exempt
from the payment of a recording fee pursuant to
Government Code § 6103.

GREAT PARK
DEVELOPMENT AGREEMENT

by and among

CITY OF IRVINE,

_____ ,

_____ ,

_____ ,

and

DEVELOPMENT AGREEMENT

This GREAT PARK DEVELOPMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2003, by and among the CITY OF IRVINE, a California charter city ("City"), _____, a _____ ("Developer I"), _____, a _____ ("Developer II"), _____, a _____ ("Developer III"), and _____, a _____ ("Developer IV). Developer I, Developer II, Developer III, and Developer IV are collectively referred herein as the "Developer Parties" and individually as a "Developer Party". City and the Developer Parties are collectively referred to herein as the "Parties" and individually as a "Party."

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute," Sections 65864, *et seq.*, of the Government Code. The Development Agreement Statute authorizes City to enter into an agreement with any person having a legal or equitable interest in real property and to provide for the development of such property and to establish certain development rights therein. Pursuant to the authorization set forth in the Development Agreement Statute, City adopted its Resolution No. 82-68 on July 13, 1982, establishing procedures for the consideration and approval of development agreements.

B. The Developer Parties each own a portion of that certain real property consisting of approximately Three Thousand Seven Hundred Nineteen (3,719) acres of land area located in the City of Irvine, County of Orange, State of California, more particularly described in the legal description attached hereto as Exhibit "A" and depicted on the Conceptual Overlay Plan attached hereto as Exhibit "B" (the "Property"). The Developer Parties desire to develop the Property with residential, commercial, educational, recreational, agriculture, park and open space uses, transit oriented development, research and development, and institutional uses as depicted on the Conceptual Overlay Plan ("Project").

C. This Agreement is intended to be, and shall be construed as, a development agreement within the meaning of the Development Agreement Statute. This Agreement will eliminate uncertainty in planning for and secure the orderly development of the Project, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, assure attainment of the maximum effective utilization of resources within the City, and provide other significant public benefits to City and its residents by otherwise achieving the goals and purposes of the Development Agreement Statute. In exchange for these benefits to City, the Developer Parties desire to receive the assurance that they may proceed with development of the Project in accordance with the terms and conditions of this Agreement, the "Existing Land Use Regulations" and the "Overlay Plan," all as more particularly set forth herein.

D. The City has determined that the Project is consistent with the goals and policies of the City's General Plan and imposes appropriate standards and requirements with respect to the development of the Property in order to maintain the overall quality of life and of the environment within the City. Prior to its approval of this Agreement, City considered the environmental impacts of the Project and completed its environmental review of the Project.

E. On April 17, 2003, the Planning Commission of City held a public hearing on the Developer Parties' application for approval of this Agreement, made certain findings and determinations with respect thereto, and recommended to the City Council of City that this Agreement be approved. On May 27, 2003, the City Council also held a public hearing on the Developer Parties' application for approval of this Agreement, considered the recommendations of the Planning Commission, and found that this Agreement is consistent with City's General Plan.

F. In accordance with the Development Agreement Statute, the City Development Agreement Regulations, and applicable law, on June 10, 2003, the City Council of City adopted Ordinance No. ____ approving this Agreement.

A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and the Developer Parties hereby agree as follows:

1. DEFINITIONS.

The following terms when used in this Agreement shall have the meanings set forth below:

The term "Agreement" shall mean this Development Agreement by and among City, Developer I, Developer II, Developer III, and Developer IV.

The term "Annual Review" shall have the meaning ascribed in Section 14 of this Agreement.

The term "Association" shall mean the entity formed to govern and administer the CC&Rs.

The term "Base Plan" shall mean the Great Park Plan land use development entitlements for the Property as set forth in the column entitled "Base Plan" in Exhibit "C" attached hereto. If any Developer Party does not execute and perform under this Agreement, the development of that Developer Party's Parcel shall be governed by the Base Plan, rather than the Overlay Plan.

The term "CC&Rs" shall mean the Declaration of Covenants, Conditions and Restrictions and Grant of Easements for the Irvine Great Park in the form attached hereto as Exhibit "K".

The term “CFD” shall mean a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Government Code Section 53311, *et seq.*, in accordance with Section 6.1 of this Agreement.

The term “City” shall mean the City of Irvine, a California charter city.

The term “City Council” shall mean the governing body of City.

The term “City Conveyance Parcels” collectively refers to the Corridor Sites, the Exposition Center South Site, the Institutional Site, the Musick/Alton Sites, the Park Site, the Sports Park Site, the Police Substation Site, and the Transit Site.

The term “City Development Agreement Regulations” shall mean the regulations establishing procedures and requirements for the consideration of development agreements set forth in City’s Resolution No. 82-68 adopted by the City Council on July 13, 1982, as the same may be amended from time to time.

The term “City’s Designee” shall mean the governmental or non-profit entity(ies) that City in its sole and absolute discretion designates to receive one or more City Conveyance Parcels in lieu of City, or that City in its sole and absolute discretion assigns to perform any one or more of the responsibilities, obligations, or undertakings of City under this Agreement.

The term “Conceptual Overlay Plan” shall mean the conceptual plan attached hereto as Exhibit “B” for the development of the Property in accordance with the Overlay Plan.

The term “Corridor Site Parcel I” refers to that portion of Parcel I consisting of approximately 114 acres of land area described in the legal description attached hereto as Exhibit “G-1” and depicted as PAZ 20 and designated as the drainage/riparian corridor on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Corridor Sites Parcel II” collectively refers to (i) the portion of Parcel II consisting of approximately 115 acres of land area depicted as PAZ 21 and designated as the drainage/riparian corridor on the Conceptual Overlay Plan, and (ii) the portion of Parcel II consisting of approximately 118 acres of land area depicted as PAZ 22a and designated as the drainage/wildlife corridor on the Conceptual Overlay Plan. The Corridor Sites Parcel II are more particularly described in the legal description attached hereto as Exhibit “G-1”.

The term “Corridor Site Parcel IV” refers to that portion of Parcel IV consisting of approximately 61 acres of land area described in the legal description attached hereto as Exhibit “G-1” and depicted as PAZ 22b and designated as the drainage/wildlife corridor on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Corridor Sites” collectively refers to the Corridor Site Parcel I, the Corridor Sites Parcel II, and the Corridor Site Parcel IV.

The term “County” shall mean the County of Orange, a political subdivision of the State of California.

The term “Developer I” shall mean _____, a _____, and any permissible successor or assignee to the rights, powers, and responsibilities of _____ hereunder, in accordance with Section 16 of this Agreement. Developer I is the fee owner of Parcel I.

The term “Developer II” shall mean _____, a _____, and any permissible successor or assignee to the rights, powers, and responsibilities of _____ hereunder, in accordance with Section 16 of this Agreement. Developer II is the fee owner of Parcel II.

The term “Developer III” shall mean _____, a _____, and any permissible successor or assignee to the rights, powers, and responsibilities of _____ hereunder, in accordance with Section 16 of this Agreement. Developer III is the fee owner of Parcel III.

The term “Developer IV” shall mean _____, a _____, and any permissible successor or assignee to the rights, powers, and responsibilities of _____ hereunder, in accordance with Section 16 of this Agreement. Developer IV is the fee owner of Parcel IV.

The term “Development Agreement Fee” shall mean the fee to be paid to City by each of the Developer Parties in four (4) installments, as more fully described in Section 4.2 of this Agreement.

The term “Development Agreement Statute” refers to Sections 65864 through 65869.5 of the California Government Code, as the same may be amended from time to time.

The term “Development Fees” shall mean the monetary consideration charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the project and development of the public facilities related to development of the project. Development Fees shall not include (i) City’s normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection, and similar fees imposed to recover City’s costs associated with processing, review, and inspection of applications, plans, specifications, etc., (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, whether or not such fees are collected by City, or (iii) the Development Agreement Fee and Supplemental Development Agreement Fee described in Sections 4.2 and 4.3 of this Agreement.

The term “Educational Site” refers to that portion of Parcel I consisting of approximately 275 acres of land area depicted as PAZs 7, 8, 9, and 10 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Effective Date” shall mean the date that is the later of (i) the date that is thirty (30) days after the date the City Council adopts the ordinance approving this Agreement, or (ii) the date this Agreement is executed by City and one or more of the Developer Parties and recorded in the Official Records of Orange County, California.

The term “Existing Golf Course Site” refers to the portion of Parcel II consisting of approximately 211 acres of land area depicted as PAZ 19 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Existing Land Use Regulations” shall mean City’s General Plan, Zoning Code, and all other ordinances, resolutions, rules, and regulations of City governing development and use of the Property in effect as of the Effective Date, including without limitation the permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings, provisions for the reservation and dedication of land for public purposes, and, subject to the following sentence, construction standards and specifications. The term “Existing Land Use Regulations” does not include the Uniform Codes pertaining to construction adopted for general application in City.

The term “Exposition Center South Site” refers to that portion of Parcel III consisting of approximately 156 acres of land area described in the legal description attached hereto as Exhibit “G-2” and depicted as PAZ 13 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “General Plan” shall mean the City of Irvine General Plan, as said General Plan exists as of the Effective Date of this Agreement (which includes Amendment No. ____ adopted by City on May 27, 2003 pursuant to Resolution No. ____), and as it may further be amended by City from time to time pursuant to Section 3.8 of this Agreement.

The term “Golf Course Fee” shall have the meaning ascribed in Section 9 of this Agreement.

The term “Great Park Plan” collectively refers to the Base Plan and the Overlay Plan established by the adoption of Resolution No. ____, adopted by the City on May 27, 2003, amending the General Plan, and Ordinance No. ____, adopted by the City on June 10, 2003, rezoning a portion of the Property within the City boundaries and prezoneing the portion of the Property currently located in unincorporated territory of the County of Orange. The Great Park Plan sets forth two alternative sets of development entitlements for the Property: The “Base Plan” authorizes principally park, open space and similar uses, and applies in the absence of this Agreement. The “Overlay Plan” authorizes a mix of residential, commercial, industrial, recreational, institutional, park and open space uses, and governs the development of each Parcel upon the Effective Date of this Agreement and continuing thereafter, provided that this Agreement remains in effect and is not terminated as to the Parcel as a result of a default of a Developer Party as more fully described in Sections 3.2 and 13.4.

The term “Institutional Site” refers to that portion of Parcel III consisting of approximately 135 acres of land area described in the legal description attached hereto as Exhibit “G-3” and depicted as PAZ 23 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “LIFOC” refers to an instrument entitled “Lease in Furtherance of Conveyance” executed by the United States Department of Navy and delivered to one or more of the Developer Parties provisionally in lieu of a deed for any portion of the Property impacted by hazardous materials, which expires and is supplanted by a conveyance deed upon the United

States Department of Navy determining that the hazardous materials impact on the portion of the Property has been appropriately remediated..

The term “Master Subdivision Map” shall mean the first subdivision map creating legal parcels within the Property, as set forth in Section 7.1 of this Agreement.

The term “Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and for fair value.

The term “Mortgagee” shall mean the holder of a beneficial interest under a Mortgage, or any successor or assignee of any such Mortgagee.

The term “Municipal Code” shall refer to the City of Irvine Municipal Code, as the same now exists or may be further amended from time to time consistent with this Agreement.

The term “Musick/Alton Sites” refers to that portion of Parcel II comprising an aggregate of approximately 100 acres of land area more particularly described in the legal description attached hereto as Exhibit “G-4” and depicted as PAZ 4 and a portion of PAZ 3 adjacent to Irvine Boulevard on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “New Golf Course Site” refers to that portion of Parcel II consisting of approximately 365 acres of land area depicted as PAZ 18 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “NITM Ordinance” shall mean City of Irvine Ordinance No. _____ as adopted by the City on June 10, 2003 and attached hereto as “Exhibit “D,” and vested by its terms as part of the Existing Land Use Regulations.

The term “NITM Program” shall have the meaning ascribed in Section 5 of this Agreement.

The term “North Irvine Adjacent Lands” shall mean the lands included within City Planning Areas 1, 2, 5, 6, 8, 9 and 40, and subject to the NITM Program.

The term “Overlay Plan” shall mean the Great Park Plan land use development entitlements for the Property as set forth in the column entitled “Overlay Plan” in the Great Park Plan attached hereto as Exhibit “C” and depicted on the Conceptual Overlay Plan attached hereto as Exhibit “B”. As to each Parcel, the Overlay Plan, rather than the Base Plan, shall govern development of the Parcel from and after the Effective Date, provided that this Agreement is executed by the Developer Party that owns the Parcel, and this Agreement remains in effect and is not terminated as to the Parcel as a result of a default of a Developer Party as more fully described in Sections 3.2 and 13.4 of this Agreement.

The term “Parcel” shall refer to Parcel I, Parcel II, Parcel III, or Parcel IV.

The term “Parcel I” shall mean that portion of the Property consisting of approximately 884 acres of land area more particularly described in the legal description attached hereto as

Exhibit “A” and depicted as PAZs 1, 5, 6, 7, 8, 9, 10, 11, 14 and 20 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Parcel II” shall mean that portion of the Property consisting of approximately 1,664 acres of land area more particularly described in the legal description attached hereto as Exhibit “A” and depicted as PAZs 2, 4, a portion of PAZ 15, and PAZs 16, 17a, 17b, 18, 19, 21, 22a and 26 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Parcel III” shall mean that portion of the Property consisting of approximately 770 acres of land area more particularly described in the legal description attached hereto as Exhibit “A” and depicted as PAZ 13, a portion of PAZ 15, and PAZs 12, 23, 24, 25, 27, 28, 29 and 32 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Parcel IV” shall mean that portion of the Property consisting of approximately 216 acres of land area more particularly described in the legal description attached hereto as Exhibit “A” and depicted as PAZs 22b, 30, 31, 33, 34, 35 and 36 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Park Site” refers to that portion of the Property located within Parcels I, II, and III consisting of approximately 367 acres of land area described in the legal description attached hereto as Exhibit “G-5” and depicted as PAZs 14, 15, and 16 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “PAZ” shall mean a planning analysis zone within the Property as depicted on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Police Substation Site” shall mean the site within Parcel I that includes the existing “Building No. 29” and approximately five acres of adjacent hardscaped land for associated parking, storage and expansion, the precise boundaries of which will be developed by the City in consultation with Developer I, and whose general description is attached hereto as Exhibit G-8.

The term “Project” shall mean the development of the Property pursuant to this Agreement, the Existing Land Use Regulations, and the Overlay Plan. The conceptual plan for development of the Property pursuant to the Overlay Plan is depicted on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Property” shall have the meaning ascribed in Recital B of this Agreement. The Property is comprised of Parcel I, Parcel II, Parcel III, Parcel IV, and certain roadways within and around the Parcels that will be dedicated to City on the Master Subdivision Map.

The term “Proposed Public Benefit Facilities and Services” shall mean the facilities, services, and other items listed in Exhibit “E” that the Parties contemplate may be financed by a CFD, as more fully explained in Section 6.1 of this Agreement.

The term “School Site” refers to a portion of Parcel II consisting of approximately 13 acres of land area, the precise location and boundaries of which shall be determined in accordance with Section 8.4 of this Agreement.

The term “Sports Park Site” refers to that portion of Parcel III consisting of approximately 165 acres of land area described in the legal description attached hereto as Exhibit “G-6” and depicted as PAZ 12 on the Conceptual Overlay Plan attached hereto as Exhibit “B”.

The term “Term” shall mean the period of time during which this Agreement shall be in effect and bind the Parties and their respective successors and assigns, as set forth in Section 2 of this Agreement.

The term “Transit Site” refers to the portion of Parcel III comprising an aggregate of approximately 35 acres of land area described in the legal description attached hereto as Exhibit “G-7” and depicted as 8 acres in PAZ 24, 7 acres in PAZ 25, and 20 acres in PAZ 32 on the Conceptual Overlay Plan attached hereto as Exhibit “B”, or otherwise within Parcel III at a precise location jointly approved by Developer III and the City.

2. TERM.

2.1 Execution of Agreement. Each of the Developer Parties shall have until the date that is thirty (30) days after the date on which the last Developer Party acquires an ownership interest in its Parcel (“Deadline Date”) to provide to City the Developer Party’s original executed counterpart of this Agreement, together with the first installment of the Development Agreement Fee owed by that Developer Party and all instruments and other items required of that Developer Party under this Agreement. If any Developer Party does not provide to City its original executed counterpart of this Agreement and all of the documents and fees referred to in the preceding sentence by the Deadline Date, this Agreement shall not be recorded against that Developer Party’s Parcel and all of the terms, provisions, rights, obligations, benefits, and burdens that relate to that Developer Party and that Developer Party’s Parcel under this Agreement shall be deemed null and void and have no force or effect, and such Developer Party’s Parcel may be developed only pursuant to the Base Plan and not the Overlay Plan.

2.2 Term. The term of this Agreement (“Term”) shall commence on the Effective Date and, except as set forth in Sections 2.3 and 2.4, shall continue thereafter for a period of twenty-five (25) years, unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the Parties.

2.3 Termination Upon Sale of Individual Lots to Public and Completion of Construction. Notwithstanding Section 2.2, and except as set forth in Section 2.4, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the satisfaction of both of the following conditions: (i) the lot has been finally subdivided and sold or leased (for a period longer than one (1) year) to a member of the public or any other ultimate user; and (ii) a certificate of occupancy has been issued for the building or buildings on the lot or a final inspection of the building(s) has been approved by City authorizing occupancy. City shall cooperate with the Developer Parties, at no cost to City, in executing in recordable form any document that a Developer Party (including any successor to the title of a Developer Party in and

to any of the aforescribed lots) may submit to confirm the termination of this Agreement as to any such lot.

2.4 Term of Golf Course Covenants. Notwithstanding Sections 2.2 and 2.3, the respective rights and obligations of Developer II and City set forth in Section 9 of this Agreement with regard to the operation of public golf courses on the Existing Golf Course Site and the New Golf Course Site and the establishment and enforcement of the Golf Course Fee on play at the golf courses shall survive the termination of this Agreement and remain in effect in perpetuity as to the Existing Golf Course Site and the New Golf Course Site (excluding any portion of the New Golf Course Site developed with residential units, which portion shall be released from this Agreement in accordance with Section 2.3).

3. DEVELOPMENT OF THE PROPERTY.

3.1 Applicable Regulations; Vested Right to Develop. Other than as expressly set forth herein, during the Term of this Agreement, the terms and conditions of development applicable to the Property, including but not limited to the permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings, and provisions for the reservation and dedication of land for public purposes, shall be those set forth in the Existing Land Use Regulations and the Overlay Plan. In connection therewith, subject to the terms and conditions of this Agreement, the Developer Parties shall have the vested right to carry out and develop the Project on the Property in accordance with the Existing Land Use Regulations and the Overlay Plan.

3.2 Overlay Plan Conditional Upon Compliance with Agreement. The Developer Parties acknowledge that the application of the Overlay Plan to the Property is contingent and conditional upon the Developer Parties' entering into this Agreement, and that the Developer Parties have no right or entitlement to develop the Property under the Overlay Plan in the absence of this Agreement and the Developer Parties' diligent performance of their obligations under this Agreement. In connection therewith, in the event this Agreement is terminated as to any Parcel in accordance with Section 13 as a result of a default of a Developer Party, the Overlay Plan shall immediately cease to apply and govern the development of such Parcel, and the development of such Parcel shall instead be governed by and subject to the Base Plan.

3.3 Tentative Subdivision Maps. Subject to Section 7.1 of this Agreement (regarding the Master Subdivision Map), with respect to applications by a Developer Party for tentative subdivision maps for portions of the Developer Party's Parcel, City agrees that the Developer Party may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of City's subdivision ordinance, as the same may be amended from time to time. If final maps are not recorded for the entire Parcel before such tentative map(s) would otherwise expire, the term of such tentative map(s) automatically shall be extended for the Term of this Agreement.

3.4 Processing of Applications and Permits. Upon satisfactory completion by a Developer Party of all required preliminary actions and payment of appropriate processing fees, if any, City shall proceed to process and check all applications for Project development and

building approvals within the times set forth in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the California Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code), and other applicable provisions of law, as the same may be amended from time to time.

3.5 Other Governmental Permits. Provided that the Developer Parties pay the reasonable cost of such cooperation, after City has approved the development of any portion of the Property, City shall cooperate with the Developer Parties in their efforts to obtain such additional permits and approvals as may be required by any other governmental or quasi-governmental agencies having jurisdiction over such portion of the Property, which permits and approvals are consistent with City's approval and which are consistent with applicable regulatory requirements. City does not warrant or represent that any other governmental or quasi-governmental permits or approvals will be granted.

3.6 Subsequent General Plan Amendments and Zone Changes. In consideration for the benefits provided to the Developer Parties under this Agreement, including without limitation the vesting of the right to develop the Property in accordance with the Existing Land Use Regulations and the Overlay Plan, the Developer Parties agree that during the Term of this Agreement, any amendments to the General Plan and changes to the zone designations for the Property may be initiated only by City and not the Developer Parties, with the understanding that any such General Plan amendments and zone changes will not become effective unless consented to by the Developer Parties (or their successors-in-interest to the Property).

3.7 Assurances to Developer Parties. The Parties acknowledge that the public benefits to be provided by the Developer Parties to City pursuant to this Agreement are in consideration for and reliance upon assurances that City will permit development of the Property in accordance with the terms of this Agreement. Accordingly, City agrees that it will not attempt to restrict or limit the development of the Property in conflict with the provisions of this Agreement. City acknowledges that the Developer Parties cannot at this time predict the timing or rate at which the Property will be developed. The timing and rate of development depend on numerous factors such as market demand, interest rates, absorption, completion schedules, and other factors which are not within the control of the Developer Parties or City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that the Developer Parties shall have the vested right to develop the Property in such order and at such rate and at such time as the Developer Parties deem appropriate within the exercise of the Developer Parties' sole subjective business judgment, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary. In addition to and not in limitation of the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the development of the Project or any portion thereof, whether adopted by initiative or

otherwise, shall apply to the Property to the extent such moratorium or other similar limitation is in conflict with the express provisions of this Agreement. Notwithstanding the foregoing, the Developer Parties acknowledge and agree that nothing herein is intended or shall be construed as (i) overriding any provision set forth in this Agreement relating to the rate or timing of development of the Project, including without limitation the obligation of Developer II to construct the golf course on the New Golf Course Property within the time set forth in Section 9, (ii) overriding any provision of the Existing Land Use Regulations or the Overlay Plan relating to the rate or timing of development of the Project, or, (iii) restricting City from exercising the powers described in Section 3.8 of this Agreement to regulate development of the Property. Nothing in this Section 3.7 is intended to excuse or release a Developer Party from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not the Developer Parties proceed with the Project.

3.8 Reservations of Authority. Notwithstanding any provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 3.8 shall apply to and govern development of the Property:

3.8.1 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies adopted or approved after the Effective Date pursuant to procedures provided by law which do not conflict with the Existing Land Use Regulations and the Overlay Plan shall apply to and govern development of the Property.

3.8.2 Overriding State and Federal Laws and Regulations. State and federal laws and regulations which override the Developer Parties' vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies which are necessary to enable City to comply with such overriding State and federal laws and regulations; provided, however, that (i) the Developer Parties do not waive their right to challenge or contest the validity of any such State, federal, or local laws, regulations or official policies; and (ii) in the event that any such State or federal law or regulation (or City ordinance, resolution, regulation, or official policy undertaken pursuant thereto) prevents or precludes compliance with one or more provisions of this Agreement, the Parties agree to consider in good faith amending or suspending such provisions of this Agreement as may be necessary to comply with such State or federal laws, provided that no Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption of development agreements as set forth in the Development Agreement Statute and each Party retains full discretion with respect thereto.

3.8.3 Public Health and Safety. Any City ordinance, resolution, regulation, or official policy, which is necessary to protect persons on the Property or in the immediate community, or both, from conditions dangerous to their health or safety, or both, notwithstanding that the application of such ordinance, resolution, regulation, or official policy or other similar limitation would result in the impairment of the Developer Parties' vested rights under this Agreement.

3.8.4 Uniform Construction Codes. Provisions of the building standards set forth in the Uniform Construction Codes shall apply to the Property. As used herein, the term “Uniform Construction Codes” collectively refers to the 1998 California Building Codes (Vols. 1, 2, and 3), the 1998 California Electric Code, the 1998 California Plumbing Code, the 1998 California Mechanical Code, the 1997 Uniform Solar Energy Code, the 1997 Uniform Swimming Pool, Spa and Hot Tub Code, the 1997 Uniform Housing Code, the Uniform Administrative Code, 1997 Edition, and the 1998 California Fire Code (including amendments thereto by the Orange County Fire Authority), as modified and amended by official action of the City, and any modifications or amendments to any such Code adopted in the future by City.

3.8.5 Police Power. In all respects not provided for in this Agreement, City shall retain full rights to exercise its police power to regulate the development of the Property. Any uses or developments requiring a site plan, tentative tract map, conditional use permit, variance, or other discretionary permit or approval in accordance with the Existing Land Use Regulations shall require a permit or approval pursuant to this Agreement, and, notwithstanding any other provision set forth herein, this Agreement is not intended to vest the Developer Parties’ right to the issuance of such permit or approval nor to restrict City’s exercise of discretion with respect thereto.

3.9 Vesting of Park and Institutional Land Uses. By this Agreement, the regulatory entitlements and restrictions of the Existing Land Use Regulations and the Overlay Plan are vested as to the Corridor Sites, the Institutional Site, the Musick/Alton Sites, the Park Site and the Sportspark Site. The uses and development allowed on the Corridor Sites, the Institutional Site, the Musick/Alton Sites, the Park Site and the Sportspark Site are, by this instrument, entitlements and restrictions that run with the land for the benefit of the remainder of the Property, and limit the Developer Parties and their successors and assigns to developing and using the Corridor Sites, the Institutional Site, the Musick/Alton Sites, the Park Site and the Sportspark Site only in accordance with the Overlay Plan and the Existing Land Use Regulations for the Term of this Agreement.

4. FEES.

4.1 Development Fees. During the Term of this Agreement, City shall not levy or require with respect to development of the Property any site-specific Development Fees (i.e., Development Fees that are not of general application and are imposed only on the Property) except those set forth in this Agreement (including but not limited to the NITM Program fees described in Section 5 of this Agreement) and those in effect on the Effective Date of this Agreement. It is understood that the preceding limitation on City’s imposition of Development Fees shall not limit City from levying against the Property additional Development Fees to the extent such Development Fees are imposed by City on a city-wide basis.

4.2 Development Agreement Fee. The Developer Parties shall pay or cause to be paid to City the aggregate sum of Two Hundred Million Dollars (\$200,000,000) (“Development Agreement Fee”) to reimburse City its costs in developing and processing the Great Park Plan, as payment for processing the Master Subdivision Map, and as partial payment for the development of the Park Site, the Sports Park Site, and other Project infrastructure, and such other uses and

purposes as may be determined by City in its sole and absolute discretion. The portion of the Development Agreement Fee payable by each Developer Party shall be as follows:

Developer I	\$48,000,000	(24% of \$200,000,000)
Developer II	\$54,000,000	(27% of \$200,000,000)
Developer III	\$68,000,000	(34% of \$200,000,000)
Developer IV	\$30,000,000	(15% of \$200,000,000)

The Development Agreement Fee shall be paid in installments with the first installment paid concurrently with the execution and delivery of this Agreement, the second installment paid thirty (30) days after the Effective Date, the third installment paid upon each Developer Party's recordation of its first final subdivision map following the recordation of the Master Subdivision Map or the date that is one (1) year after the Effective Date, whichever occurs first, and the fourth installment paid upon the issuance of each Developer Party's first building permit or the date that is two (2) years after the Effective Date, whichever occurs first. Payments of the Development Agreement Fee shall be made by wire transfer of funds, or by a cashier's or certified check issued by a California institution.

4.2.1 First Installment of Development Agreement Fee. The first installment of the Development Agreement Fee in the aggregate amount of Thirty Three Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars (\$33,333,333) shall be paid to City by the Developer Parties' concurrent with the Developer Parties execution and delivery of this Agreement. The amount payable by each Developer Party as the first installment of the Development Agreement Fee upon that Developer Party's execution and delivery of this Agreement shall be as follows:

Developer I	\$ 8,000,000	(24% of \$33,333,333)
Developer II	\$ 9,000,000	(27% of \$33,333,333)
Developer III	\$11,333,333	(34% of \$33,333,333)
Developer IV	\$ 5,000,000	(15% of \$33,333,333)

4.2.2 Second Installment of Development Agreement Fee. The second installment of the Development Agreement Fee in the aggregate amount of Thirty-Three Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars (\$33,333,333) shall be paid to City by the Developer Parties within thirty (30) days after the Effective Date of this Agreement. The amount payable by each Developer Party as the second installment of the Development Agreement Fee shall be as follows:

Developer I	\$ 8,000,000	(24% of \$33,333,333)
Developer II	\$ 9,000,000	(27% of \$33,333,333)
Developer III	\$11,333,333	(34% of \$33,333,333)
Developer IV	\$ 5,000,000	(15% of \$33,333,333)

4.2.3 Third Installment of Development Agreement Fee. The third installment of the Development Agreement Fee in the aggregate amount of Sixty-Six Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars (\$66,666,667) shall be paid to City by the Developer Parties no later than the first to occur of the following: (i) the date that is one (1) year

after the Effective Date of this Agreement, or (ii) the date the first final tract map for the Developer Party's Parcel is recorded following the recordation of the Master Subdivision Map for the entirety of the Property as set forth in Section 7.1. The amount payable by each Developer Party as the third installment of the Development Agreement Fee shall be as follows:

Developer I	\$ 16,000,000	(24% of \$66,666,667)
Developer II	\$ 18,000,000	(27% of \$66,666,667)
Developer III	\$ 22,666,667	(34% of \$66,666,667)
Developer IV	\$ 10,000,000	(15% of \$66,666,667)

4.2.4 Fourth Installment of Development Agreement Fee. The fourth installment of the Development Agreement Fee in the aggregate amount of Sixty-Six Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars (\$66,666,667) shall be paid to City by the Developer Parties prior to and as a condition to the issuance of the first building permit for a building within that Developer Party's Parcel, but in no event later than the date that is two (2) years after the Effective Date of this Agreement. The amount payable by each Developer Party as the fourth installment of the Development Agreement Fee shall be as follows:

Developer I	\$16,000,000	(24% of \$66,666,667)
Developer II	\$18,000,000	(27% of \$66,666,667)
Developer III	\$22,666,667	(34% of \$66,666,667)
Developer IV	\$10,000,000	(15% of \$66,666,667)

4.3 Supplemental Development Agreement Fee. In the event the City is unable to form the CFD referred to in Section 6.1 of this Agreement and generate funds from the CFD of up to \$171,000,000 for the construction of public improvements (i.e. net funds available for construction), the Developer Parties shall pay or cause to be paid to City the aggregate sum of Fifty Million Dollars (\$50,000,000) ("Supplemental Development Agreement Fee") to reimburse City as partial payment for the development of the Park Site, the Sports Park Site and other Project infrastructure. The portion of the Supplemental Development Agreement Fee payable by each Developer Party shall be as follows:

Developer I	\$12,000,000	(24% of \$50,000,000)
Developer II	\$13,500,000	(27% of \$50,000,000)
Developer III	\$17,000,000	(34% of \$50,000,000)
Developer IV	\$ 7,500,000	(15% of \$50,000,000)

The Supplemental Development Agreement Fee shall be due on the date that is four (4) years after the Effective Date. Payment of the Supplemental Development Agreement Fee shall be made by wire transfer of funds or by a cashier's or certified check issued by a California institution. In the event the CFD referred to in Section 6.1 of this Agreement is formed and City determines in its sole and absolute discretion that the CFD will generate sufficient revenue to pay the costs of the infrastructure and other items for which the Supplemental Development Agreement Fee otherwise would be used to pay, City will consider waiving the Supplemental Development Agreement Fee.

4.4 Other Fees and Charges. Except as specifically set forth in Sections 4.1 through 4.3, nothing set forth in this Agreement is intended or shall be construed to limit or restrict City's authority to impose new fees, charges, assessments, or taxes for the development of the Property or to increase any existing fees, charges, assessments, or taxes, and nothing set forth herein is intended or shall be construed to limit or restrict whatever right the Developer Parties might otherwise have to challenge any fee, charge, assessment, or tax either not set forth in this Agreement or not in effect as of the Effective Date. In connection therewith, the Developer Parties shall timely pay all applicable fees, charges, assessments, and special and general taxes validly imposed in accordance with the Constitution and laws of the State of California, including without limitation school impact fees in accordance with Government Code §§ 65995, *et seq.*

5. NORTH IRVINE TRANSPORTATION INFRASTRUCTURE.

5.1 NITM Ordinance. On or about June 10, 2003, the City adopted the NITM Ordinance establishing a fee program to be paid on all construction within the northern portion of the City (including the Property and the North Irvine Adjacent Lands) for the coordinated and phased installation of required traffic and transportation improvements (the "NITM Program"). The NITM Program is incorporated by reference and shall be considered part of this Agreement. The NITM Ordinance and NITM Program as adopted by the City are included in the Existing Land Use Regulations and the Development Plan under the terms of this Agreement. The City and the Developer Parties shall implement the NITM Program.

5.2 Concurrent Agreement(s) With North Irvine Adjacent Land's Owner. On or about June 10, 2003, the City adopted its Ordinance No. _____ approving the "NITM Program Implementing Agreement" by and between the City and the owner of the North Irvine Adjacent Lands. The "NITM Program Implementing Agreement" is an agreement governed by the Development Agreement Statute, and provides that the owners and developers of the North Irvine Adjacent Lands will participate in the NITM Program.

5.3 Waiver of Objections Due To Allocation And Apportionment of NITM Fees. The Developer Parties acknowledge that the Property is subject to the terms and conditions of the NITM Program and that the Developer Parties shall participate in the NITM Program and perform the obligations required of each of them thereunder. The Developer Parties acknowledge that no NITM Program fees or costs are assessed or imposed upon the Exposition Center South Site, the Corridor Sites, the Park Site, the Sports Park Site, the Transit Site and the Police Substation Site, and that the fees associated with each of these areas under the NITM Program will be paid by the Parcel in which the exempted area is located. By the execution of this Agreement, the Developer Parties waive any objection to, and covenant not to sue the City with respect to, any issue in any way relating to the adopted allocation of costs, expenses and fees contained in the NITM Program as of the date of this Agreement to, by and among the various areas, including any and all portions of the Property. The Developer Parties do not waive any objection or make any covenant not to sue as to any future allocations by the City that are inconsistent with the NITM Program.

5.4 Commitment Regarding Payment Of NITM Fee Established For Each Future Development Area. The NITM Ordinance establishes a fee assigned to each "Future

Development Area” (as that term is defined by the NITM Ordinance) covered by the NITM Program. Certain of those Future Development Areas are located within the Property. Each of the Developer Parties agree that it shall pay the NITM fees as provided in the NITM Ordinance, including without limitation the fees required to be paid for each Future Development Area within the Parcel(s) owned by each of the Developer Parties under the terms and conditions of the NITM Ordinance. Pursuant to the NITM Ordinance, the Parties agree that each of the Developer Parties shall be regarded by the City as having remaining “developable land” within its Future Development Area so long as there is vacant land remaining (for which no building permit has been applied for and issued to that Developer Party) which has been subdivided or which is reasonably likely to be subdivided and used for the construction of new buildings under the provisions of the Conceptual Overlay Plan and the Existing Land Use Regulations, regardless of whether or not the Developer Party has applied for or the City has permitted such development.

5.5 Notice of NITM Program to Developers and Purchasers of the Property. Each of the Developer Parties shall include notice of the NITM Program obligations pursuant to this Agreement in each instrument conveying any portion of the Property to a developer, merchant builder or corporate or institutional purchaser of a portion of the Property.

5.6 Commitment Regarding Sale Price For Right Of Way Land Owned By a Developer Party Specified In NITM Program. The NITM Program as adopted by the City specifies and refers to certain real property which is contemplated to be acquired by the City to construct the specified NITM traffic improvements. The City has indicated to the Developer Parties that if the City cannot acquire such real property through a voluntary sale from a Developer Party at a price acceptable to the City, the City’s management would recommend to the City Council the adoption of a resolution of necessity for the acquisition of such real property by eminent domain; however the City is willing to enter into a negotiated sale of the land to avoid the necessity for formal condemnation of the land. Under this threat of condemnation by the City, each of the Developer Parties agrees to sell this specified land to the City upon reasonable terms and conditions at a sale price specified in the NITM Program, with the 5% escalation factor in the sale price as defined in the NITM Program.

5.7 NITM Account. The City shall maintain a separate account (the “NITM Account”) under its custody and control to hold all fees collected in trust for the benefit of the participants in the NITM Program. All fees collected under the NITM Program, all fees collected as conditions of approval or other fair share fees from “Non-Participating Properties” under Section 5.10 below, and all fair share fees collected from landowners and developers in the North Irvine Adjacent Lands under Section 5.9 below, shall be deposited in the NITM Account. All interest or other income earned by the funds in the NITM Account shall accrue and be deposited in such account. As set forth in the NITM Program, the City shall be reimbursed its reasonable costs for administering and maintaining this NITM Account.

5.8 Independent Nature Of Obligations. The obligations of each of the Developer Parties, the City, and the developers and landowners in the North Irvine Adjacent Lands are independent.

5.9 City Covenant To Obtain NITM Or Fair Share Fees From North Irvine Adjacent Lands. The City intends to enter into the “NITM Program Implementing Agreement” referenced in Section 5.2 above with the owners of the North Irvine Adjacent Lands to obtain from them the fees and improvements contemplated in the NITM Program. The failure of the City to obtain, enforce or otherwise implement such agreement shall not invalidate this Agreement or the NITM Program, which shall remain in effect, and such failure shall not operate to increase or decrease the obligations of each of the Developer Parties under the NITM Program or under this Agreement. The City covenants that to the extent permitted by law it shall make a good faith effort to approve and implement such “NITM Program Implementing Agreement”. Should such “NITM Program Implementing Agreement” not be implemented in whole or in part for the North Irvine Adjacent Lands, to the extent permitted by law, the City shall require the landowners and developers of the North Irvine Adjacent Lands to pay fees representing the fair share of such North Irvine Adjacent Lands for the traffic improvements that will be utilized by uses in the North Irvine Adjacent Lands, including any of the “List of NITM Improvements” that will be constructed or fully or partially financed under the NITM Program as specified by the NITM Ordinance, including without limitation the fees established by the NITM Ordinance for such property. The City further covenants that any fees collected from the North Irvine Adjacent Lands for NITM Improvements will be deposited in the NITM Account.

5.10 City Covenant To Obtain NITM Or Fair Share Fees From All Property Owners In The North Irvine Adjacent Lands. Certain properties in the North Irvine Adjacent Lands are not included in the “NITM Program Implementing Agreement” referenced in Section 5.2 above (“Non-Participating Properties”). Should any of these Non-Participating Properties seek to develop in a manner which will increase traffic from those properties, the City covenants that it shall to the extent permitted by law, require the payment of fees representing such Non-Participating Properties’ fair share of the traffic improvements which will be used by this traffic, including any NITM Program traffic improvements. The City further covenants that any fees collected from Non-Participating Properties for NITM Program traffic improvements shall be deposited in the NITM Account referenced in Section 5.7 above.

5.11 City Covenant To Use NITM Fees And NITM Account For NITM Program. The City shall use the funds in the NITM Account, and all fees collected under the NITM Program, solely for the purposes authorized in the NITM Program. As set forth in the NITM Program, no funds may be used by the City for traffic improvements or other purposes which are not NITM Traffic Improvements, without the consent of the Developer Parties and the owner(s) of the North Irvine Adjacent Lands.

5.12 Satisfaction Of Mitigation Obligations Or Other Traffic Conditions. The City has adopted certain mitigation measures and conditions of approval for the transportation and traffic impacts of the development of the Property pursuant to the Overlay Plan. The City has determined based upon a nexus fee study that the costs of the NITM Program are fairly apportioned to the Property included within the NITM Program as set forth in the NITM Ordinance, based upon calculations of average daily trips in a manner which has a nexus to, and is proportional to, the traffic which will be generated by all of the development contemplated in the Overlay Plan for the Property. The City intends to utilize the following mitigation measure and condition of approval for all development within the Property, including any future discretionary approvals adopted for the Property which the City intends to be applicable to the

Property under this Agreement: “Applicant (or property owner or developer) shall mitigate its traffic and transportation impacts by participation in the NITM Program established by Ordinance No. _____ and the Great Park Development Agreement recorded on _____, against the Property.” In addition to this mitigation measure and condition of approval, the City may also add conditions to the approval of a subdivision tentative tract map for development of the Property for site-specific in-tract traffic improvements that provide Project access drives, internal streets and traffic control measures within the area to be subdivided. The Developer Parties acknowledge that the City retains the discretion to judge the adequacy of traffic improvements and mitigation in the future, and that the City may exercise that discretion to update the NITM Program through future “Comprehensive Traffic Studies” as defined in and pursuant to the NITM Ordinance.

5.13 Certificate of NITM Compliance. Upon written request from any Developer Party with respect to an identified legal parcel or parcels, the City shall deliver within twenty (20) days a certificate confirming that this Agreement is in full force and effect and whether or not NITM fees have been paid, or if there are any outstanding or future NITM fee obligations with respect to such parcel or parcels.

6. FINANCING FOR PUBLIC IMPROVEMENTS AND SERVICES.

6.1 Formation of Community Facilities District. The Developer Parties desire that financing for the Proposed Public Benefit Facilities and Services be provided by (i) the formation of a community facilities district for the Property pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code §§ Section 53311 *et seq.*) ("CFD"), (ii) the issuance of bonds by the CFD ("CFD Bonds"), the proceeds of which would be used to construct and/or acquire and maintain the Proposed Public Benefit Facilities and Services upon completion of their construction, to the extent the Proposed Public Benefit Facilities and Services legally and feasibly may be financed and/or paid utilizing this method of financing, and (iii) an annual levy by the CFD of a special tax sufficient to pay principal and interest on the CFD Bonds, annual administration, engineering, and inspection costs associated with the CFD, and police and fire protection services for any portion of the Property that may be owned by City or City's Designee (specifically excluding the Educational Site) and for roadway and park operation and maintenance costs within the CFD, which CFD special tax shall be secured by recordation in the Official Records of the County of Orange of continuing liens against the Property or portions thereof.

6.1.1 The Developer Parties do hereby irrevocably consent to the formation of a CFD, the issuance of CFD Bonds, the imposition of taxes against the Property with respect thereto, and the apportionment of the costs and expenses of the Proposed Public Benefit Facilities and Services set forth in Exhibit “E”, and waive any and all right of protest or objection with respect thereto.

6.1.2 In the event City elects to form a CFD, the Developer Parties agree to cooperate with City and take all necessary actions to accomplish the formation of the CFD and the imposition of taxes with respect thereto, including without limitation, if required by City, the submission of a ballot to City by each Developer Party unconditionally and without qualification in favor of the formation of the CFD and the levying of such taxes. Nothing herein shall be

construed as a commitment by City to form a CFD or as a limitation on City's legislative discretion with respect thereto.

6.1.3 In the event that City is unable or elects not to proceed with the formation of a CFD and the issuance of CFD bonds for any reason, City shall not be liable for any resulting costs to the Developer Parties and the Developer Parties shall nonetheless be responsible for paying a proportionate share of the costs incurred by City to construct the Proposed Public Benefit Facilities and Services, as follows:

Developer I	24%
Developer II	27%
Developer III	34%
Developer IV	15%

In addition, in the event the CFD is not formed in the first instance or the CFD is formed but the special tax levied by the CFD is repealed, or otherwise terminated, or is insufficient to pay the costs to maintain the Proposed Public Benefit Facilities and Services (including but not limited to the potential special tax increase for police services in accordance with Section 6.1.4 below), the maintenance costs or the amount of the deficiency shall be included in the Association's budget as an expense and the Association shall levy and collect assessments in an amount sufficient to pay the maintenance costs, all as more fully explained in the CC&Rs. Each Developer Party shall, upon the Developer Party's execution and delivery of this Agreement to City, execute and deliver to City the CFD Petition in the form attached hereto as Exhibit "F". The Developer Parties have agreed to the financing provisions set forth in this Section 6.1 and to perform the obligations hereunder in exchange for the consideration and benefits provided to the Developer Parties by City under this Agreement, including without limitation the vested right to develop the Property in accordance with Section 3.1.

6.1.4 In the event that a Redevelopment Project Area is established pursuant to the California Redevelopment Law, Health & Safety Code Section 33000, *et seq.*, that covers all or a portion of the Property and results in a loss of property tax revenue to the City's general fund, the special tax authorized by this Section 6.1 shall be increased to include the cost of all police and public safety services to the Property (but specifically excluding the Educational Site unless the City in its sole and absolute discretion approves the use of the special tax to cover police costs within the Educational Site). The Developer Parties agree to cooperate with City and take all necessary action to accomplish the increase of the CFD special tax, including without limitation, if required by City, the submission of a ballot to City by each Developer Party unconditionally and without qualification in favor of such tax increase. In this regard, ~~the~~ Developer Parties each irrevocably and unconditionally waive any objection to such special tax increase, and irrevocably and unconditionally covenant to cast their respective votes in favor of such special tax increase.

6.2 Formation of Landscaping and Lighting Maintenance District. City may consider establishing a landscaping and lighting maintenance district for the Property, or portions thereof, to finance the maintenance of certain public improvements, including landscaping, lighting, streets, and park and recreational facilities, pursuant to the procedures set forth in City's Municipal Code and, to the extent applicable, the Landscaping and Lighting Act of 1972 (Streets

and Highways Code §§ 22500, *et seq.*). The Developer Parties hereby irrevocably consent to the formation of such a landscaping and lighting maintenance district and waive any and all right of protest or objection with respect thereto. In the event City elects to form a landscaping and lighting maintenance district, the Developer Parties agree to cooperate with City and take all necessary action to accomplish the formation of the district and the imposition of assessments, including without limitation, if required by City, the submission of a ballot to City by each Developer Party unconditionally and without qualification in favor of the formation of the district and the levying of such assessments. Nothing herein shall be construed as a commitment by City to form a landscaping and lighting maintenance district or as a limitation on City's legislative discretion with respect thereto. In the event the landscaping and lighting maintenance district is not formed in the first instance or the landscaping and lighting maintenance district is formed but the assessment levied by the landscaping and lighting maintenance district is repealed, or otherwise terminated, or is insufficient to pay the costs to maintain public improvements designated by City for maintenance, the maintenance costs or the amount of the deficiency shall be included in the Association's budget as an expense and the Association shall levy and collect assessments in an amount sufficient to pay the maintenance costs, all as more fully explained in the CC&Rs. The Developer Parties have agreed to the financing provisions set forth in this Section 6.2 and to perform the obligations hereunder in exchange for the consideration and benefits provided to the Developer Parties by City under this Agreement, including without limitation the vested right to develop the Property in accordance with Section 3.1.

6.3 Police Services. Unless otherwise determined by the City in its sole and absolute discretion, the Irvine City Police Department shall be the only police force serving the Property. The owner(s) and operator(s) of the Educational Site shall pay for the costs incurred by City to provide police services to the Educational Site. In connection therewith, as a condition to the commencement of operations on the Educational Site, the owner(s) of the Educational Site shall enter into an agreement with City on terms acceptable to City obligating the owner(s) to pay to City the costs of providing police services to the Educational Site. As used herein, the term "commencement of operations" shall mean that activities are being conducted on the Educational Site in connection with the provision of educational services to the public and/or the operation of an educational institution thereon.

7. PROPERTY-WIDE ACTIVITIES TO BE UNDERTAKEN BY CITY.

7.1 Master Subdivision Map. City or City's Designee shall serve as the agent for all the Developer Parties with regard to processing the Master Subdivision Map. City shall use the legal descriptions the United States Department of the Navy used to convey the Parcels to the Developer Parties as a basis for the Master Subdivision Map and shall include on the Master Subdivision Map for public dedication the arterials, major thoroughfares, and parks shown on the Conceptual Overlay Plan, and all necessary utility rights-of-way and all existing utility facilities including pipes, wires, and appurtenant facilities. Property dedicated to City shall not be subject to any future interests, including reversionary, remainder, and executory interests. The Developer Parties shall cooperate with and assist City, as requested by City, in City's efforts to process and record the Master Subdivision Map. City shall exercise reasonable efforts to submit the Master Subdivision Map to the Planning Commission for consideration within 365 days following the Effective Date of this Agreement.

7.2 Property-Wide Permits. The development of the Property will require various permits and entitlements from state and federal agencies including without limitation a Section 404 Permit from the U.S. Army Corps of Engineers, Fish and Game Section 1601/1603 Permits from the California Department of Fish and Game, an Irvine Ranch Water District Subarea Master Plan, a National Pollution Discharge Elimination System Permit, and a master dry utility master plan. Each of the Developer Parties hereby designates City or City's Designee as its agent to process such permits and entitlements. The Developer Parties will cooperate with City and assist City, as requested by City, in City's efforts to obtain the permits and entitlements. City shall exercise reasonable efforts to file applications for the permits and entitlements described herein within 365 days after the Effective Date, and shall exercise reasonable efforts to attempt to obtain the permits within 700 days after the Effective Date.

7.3 Design and Development Guidelines. In accordance with the provisions of the CC&Rs, the Developer Parties shall cooperate with City or the City's Designee in the establishment of guidelines for the master design and development of the Property. The design and development guidelines shall, at the discretion of the City, include provisions for sustainable development and "green" (i.e., environmentally sensitive) development standards and requirements.

7.4 Construction of Proposed Public Benefit Facilities. City or City's Designee shall construct or cause to be constructed the Proposed Public Benefit Facilities. The costs of the Proposed Public Benefit Facilities shall be paid for out of the proceeds of the CFD or, if the CFD is not formed, by the Developer Parties, as more fully explained in Section 6.1 of this Agreement.

8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS.

8.1 Conveyance of City Conveyance Parcels to City or City's Designee.

8.1.1 Application of Section 8.1 to Developer Parties. Each of the Developer Parties is subject to the terms of Section 8.1 of this Agreement with respect to its Parcel only, and each term, condition, and obligation contained in this Section 8.1 is agreed to and made by a Developer Party only to the extent the City Conveyance Parcel is located within that Developer Party's Parcel. A legal description of the City Conveyance Parcels located within each Parcel is set forth in Exhibit "H" attached hereto.

8.1.2 No Purchase Price. The Developer Parties' conveyance and dedication of the City Conveyance Parcels to City or City's Designee shall be in consideration of City's performance of its obligations set forth in this Agreement and neither City nor City's Designee shall be required to pay any fee or purchase price for the City Conveyance Parcels.

8.1.3 Delivery of Grant Deed. Subject to Section 8.8, concurrently with its execution and delivery of this Agreement to City, each Developer Party shall execute, acknowledge, and deliver to City a grant deed in the form attached hereto as Exhibit "I" conveying to City or City's Designee at no cost to City or City's Designee fee title to the City Conveyance Parcels located within the Developer Party's Parcel.

8.1.4 Condition of Title; Title Insurance Policy. The Developer Parties shall cause the City Conveyance Parcels to be conveyed free and clear of all recorded and unrecorded monetary liens and all recorded and unrecorded non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title, excepting only the following exceptions listed in the Preliminary Title Report for the City Conveyance Parcels issued by _____ Title Company (“Title Company”) on _____, 2003, under Order No. _____:

Corridor Site Parcel I: Exception Nos. _____
Corridor Site Parcel II: Exception Nos. _____
Exposition Center South Site: Exception Nos. _____
Institutional Site: Exception Nos. _____
Marshburn Basin Site: Exception Nos. _____
Musick/Alton Sites: Exception Nos. _____
Park Site: Exception Nos. _____
Police Substation Site: Exception Nos. _____
Sports Park Site: Exception Nos. _____
Transit Site: Exception Nos. _____

The Developer Parties shall pay all costs required to place title in the condition described in this Section 8.1.4. A condition to City’s acceptance of the City Conveyance Parcels shall be the irrevocable commitment of the Title Company to deliver to City or City’s Designee upon the transfer of title to the City Conveyance Parcels, an ALTA standard or, at City’s election, an extended coverage owner’s policy of title insurance showing title vested in City or City’s Designee in the condition described in this Section 8.1.4 with insurance coverage in the amount of the fair market value of the City Conveyance Parcel as determined by City.

8.1.5 Modifications to Property Boundaries. The Parties acknowledge that it may be necessary to adjust the boundaries of the City Conveyance Parcels once the final road alignments are determined, the Master Subdivision Map and the master design and development guidelines are completed, and engineering data becomes available. City and the Developer Parties shall cooperate with each other and perform such acts and execute such documents as necessary to effectuate such adjustments.

8.2 Park Dedications.

8.2.1 Dedication of Neighborhood Parks. Each Developer Party shall improve and dedicate to City on the subdivision maps for the Property neighborhood parks, based on the rate of 3 acres/1,000 population.

8.2.2 Satisfaction of Community Park Obligations. The Developer Parties’ conveyance of the Park Site and Sports Park Site to City shall be deemed to satisfy any requirement imposed upon the Developer Parties for the dedication or development of community parks pursuant to the City’s General Plan and Municipal Code in connection with the development of the Property.

8.3 Dedication of Streets to City. The Developer Parties acknowledge that they will be required to dedicate to City on the Master Subdivision Map, and perhaps on subsequent subdivision maps for portions of the Property, all arterials and major thoroughfares. City reserves the discretion to declare that all other streets shall be privately owned and maintained.

8.4 Dedication of School Site to IUSD. Developer II acknowledges that it will be required to dedicate to the Irvine Unified School District (“IUSD”) fee title to the School Site at no cost to IUSD. The precise location and boundaries of the School Site shall be as determined by IUSD. From and after the Effective Date, Developer II shall cooperate with IUSD in an effort to determine the terms for the timing and conveyance of the School Site to IUSD.

8.5 Quitclaim of Water Rights. Concurrently with the execution and delivery of this Agreement to City, each Developer shall execute, acknowledge and deliver to City a quitclaim deed in the form attached hereto as Exhibit “J” quitclaiming to City all of the Developer Party’s right, title and interest in and to any water rights in, under, within or associated with such Developer Party’s Parcel.

8.6 Quitclaim of Existing Utilities. Concurrently with the execution and delivery of this Agreement to the City, each Developer shall execute, acknowledge and deliver to City a quitclaim deed in the form attached hereto as Exhibit “L” quitclaiming to the City any and all existing pipelines, conduits, poles, valves, and other facilities, structures and other items located within the boundaries of the Property and used or useful in connection with the delivery or provision of potable water, irrigation and industrial water, wastewater, natural gas, electric, telephone, cable television and data transmission services, and all property interests and rights-of-way incidental thereto.

8.7 Temporary Reciprocal Access Easements. By this Agreement, each of the Developer Parties (a “Grantor Party”) hereby grants to each of the other Developer Parties (a “Grantee Party”) and their respective employees, agents, contractors, and invitees a temporary non-exclusive easement appurtenant to the Grantee Party’s Parcel over and across the surface of that portion of the Grantor Party’s Parcel referred to herein as the “Access Easement Areas” for the purpose of vehicular access, ingress, and egress to and from the Grantee Party’s Parcel to a public roadway. As to each Parcel, the “Access Easement Areas” refers to the portions of the Parcel designated by the Grantor Party as the location(s) for the access easements described herein. The Access Easement Areas shall be located on existing roadways or other areas within the Parcel that provide the Grantee Parties reasonable access from a public roadway to their Parcel. The Grantor Parties shall have the right from time to time, by delivery of written notice to the Grantee Parties, to change the location of the Access Easement Areas. The Grantee Parties shall cooperate with the Grantor Parties and coordinate their entries on the Access Easement Areas with the Grantor Party in order to minimize interference with the Grantor Party’s development activities. Each of the Grantee Parties shall indemnify, defend, and hold harmless the Grantor Parties from and against any claim arising out of the Grantee Party’s use of the Access Easement Areas. The easements over the Access Easement Areas in favor of a Grantee Party shall terminate (without the execution or recordation of any further document or the taking of any further action) at such time as there is direct access between the Grantee Party’s Parcel and a public roadway. The Grantee Parties shall cooperate with the Grantor Parties in executing

in recordable form any document that a Grantor Party (including any successor to the title of a Developer Party) may submit to confirm the termination of the easement.

8.8 Assignment of LIFOCS. Notwithstanding Section 8.1, in the event that any portion of any of the City Conveyance Parcels is transferred to a Developer Party by means of a LIFOC rather than a conveyance deed, that Developer Party shall execute and deliver to the City an assignment in the form attached hereto as Exhibit "M" covering each LIFOC affecting a City Conveyance Parcel within that Developer Party's Parcel. Each Developer Party holding any portion of any of the City Conveyance Parcels pursuant to a LIFOC shall execute and deliver such assignment concurrently with its execution and delivery of this Agreement to the City, and the provisions of Section 8.1 of this Agreement shall apply to such assignment agreement and the Developer Party's execution and delivery of same.

9. GOLF COURSES

Developer II covenants that the golf course to be developed on the New Golf Course Site shall be completed and opened to the general public for play not later than three (3) years after the Effective Date and that thereafter the golf course shall remain open to the general public (and not restricted as a private or membership course). In addition, Developer II covenants that the golf course on the Existing Golf Course Site shall remain open to the general public (and not restricted as a private or membership course). Developer II shall pay to City a fee per round for each round of play ("Golf Course Fee") on the golf course on the Existing Golf Course Site and the golf course to be developed on the New Golf Course Site. Commencing on the Effective Date and continuing until December 31, 2008, the amount of the Golf Course Fee shall be the sum of Five Dollars (\$5.00). Commencing on January 1, 2009, and on each five (5) year anniversary thereafter, the Golf Course Fee shall be increased by an amount equal to Twenty Percent (20%) of the then current Golf Course Fee. Developer II hereby consents to and waives any right of protest with regard to the establishment and enforcement of the aforescribed fee on rounds of play at the golf courses. Developer II further agrees that the Golf Course Fee established by City pursuant to this Agreement does not constitute a tax subject to the voter approval requirements of Article XIII A of the California Constitution, Article XIII C of the California Constitution or California Government Code Section 53720, *et seq.*, and, in addition, that the Golf Course Fee is not a fee imposed "as an incident of property ownership" within the meaning of Article XIII D of the California Constitution.

The Golf Course Fee imposed by City hereunder shall be collected by Developer II and shall be remitted to City each month on or before the last day of the following month, with each payment accompanied by such information as City may reasonably determine to be necessary to verify the number of rounds played at the Golf Courses during the preceding month. Developer II shall prepare and keep full and accurate records and receipts of the number of rounds played at the Golf Courses. Such receipts and records shall be kept for a period of three (3) years after the close of each calendar year, and shall be available for inspection and audit by City and City's representatives. If it is determined that there has been a deficiency in the payment of the Golf Course Fee, then such deficiency shall become immediately due and payable. In addition, if the amount of the deficiency for any calendar month is more than two percent (2%), then Developer II shall pay to City all costs and expenses incurred by City in conducting the audit plus an amount equal to twenty percent (20%) of the underpayment.

Developer II acknowledges that the provisions of this Section 9 survives the termination of this Agreement.

10. CC&Rs.

Concurrently with the execution and delivery of this Agreement to City, the Developer Parties shall execute, acknowledge, and deliver to City the CC&Rs. City shall cause the CC&Rs to be recorded concurrently with the recordation of this Agreement.

11. UTILITIES.

The Developer Parties acknowledge that the existing utility system for the Property is rudimentary. Pending installation and development of the final utility system serving this Project, the Developer Parties shall cooperate in good faith with each other in an effort to ensure that all of the Developer Parties have access to and use of the available utilities servicing the Property, which efforts may include the installation of submeters or the equitable apportionment of the costs of utilities furnished through a master meter for the Property or portions thereof.

12. RECYCLING HARDSCAPE

If a Developer Party desires to recycle any of the concrete or other hardscape on its Parcel (including the military aircraft runway), the Developer Party shall participate in the recycling program to be developed by City or City's Designee. The amount or rate paid to the recycler by a Developer Party for the recycling under City's recycling program shall not be more than the amount or rate paid by City to the recycler for recycling similar materials. The Developer Parties acknowledge that City or City's Designee may receive revenue from the recycling program and that the Developer Parties shall not be entitled to share in that revenue.

13. DEFAULT, REMEDIES, AND TERMINATION.

13.1 Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("Nondefaulting Party") shall comply with the notice and cure provisions of this Section 13.1. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of any other Party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Nondefaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if the Defaulting Party has failed to take action and cured the default within ten (10) days after the date of such notice (for monetary defaults), within thirty (30) days after the date of such notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following:

(i) notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(ii) notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;

(iii) promptly commences to cure the default within the thirty (30) day period;

(iv) makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(v) diligently prosecutes such cure to completion,

then the Defaulting Party shall not be deemed in breach of this Agreement. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default of its obligations set forth in this Agreement if said breach or failure involves the payment of money but the Defaulting Party has failed to completely cure said monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

13.2 Default Remedies. Subject to Section 13.3, in the event of a default, the Non-Defaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section 13.2, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to the City Development Agreement Regulations and/or the Development Agreement Statute, in which event the matter shall be scheduled for consideration and review by the City Council in the manner set forth in the City Development Agreement Regulations and/or the Development Agreement Statute.

13.3 Developer Parties' Exclusive Remedy. The Parties acknowledge that City would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement, the Great Park Plan, or the Existing Land Use Regulations, or the application thereof, or any permit or approval sought by a Developer Party in accordance with the Great Park Plan or the Existing Land Use Regulations. Accordingly, each of the Developer Parties covenants on behalf of itself and its successors and assigns, not to sue City for damages or monetary relief for any breach of this Agreement or arising out of or connected with any dispute, controversy or issue regarding the application, interpretation of effect of this Agreement, the Great Park Plan, the Existing Land Use Regulations, or any land use permit or approval sought in connection with the development or use of the Property or any portion thereof, the Parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be the Developer Parties' sole and exclusive judicial remedies.

13.4 Termination of Overlay Plan Upon Termination of Agreement. The Developer Parties acknowledge that the application of the Overlay Plan to the Property is contingent and conditional upon the Developer Parties' entering into this Agreement and performing hereunder,

and that the Developer parties have no right or entitlement to develop the Property under the Overlay Plan in the absence of this Agreement and the Developer Parties' diligent performance of their obligations under this Agreement. In connection therewith, in the event this Agreement is terminated as to any Parcel in accordance with Section 13.2 as a result of a default of a Developer Party, the Overlay Plan shall immediately cease to apply and govern the development of such Parcel, and the development of such Parcel shall instead be governed by and subject to the Base Plan.

13.5 Cross-Defaults. City agrees that a default by a Developer Party hereunder shall constitute a default of the other Developer Parties only in the event the obligation breached is one in which the Developer Parties are jointly and severally liable. In the event that a default exists with respect to one or more but not all of the Developer Parties, City shall not be entitled to any legal or equitable remedies or to terminate this Agreement with respect to those Developer Parties who are not in default.

13.6 Force Majeure. The obligations by any Party hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such Party, including to the extent applicable, the following: war; insurrection; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeological, paleontologic, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; with regard to delays of a Developer Party's performance, delays caused by City's failure to act or timely perform its obligations set forth herein; with regard to delays of City's performance, delays caused by a Developer Party's failure to act or timely perform its obligations set forth herein; inability to obtain necessary permits or approvals from other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such Party. Notwithstanding the foregoing, any delay caused by the failure of City or any agency, division, or office of City to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of force majeure extending the time for City's performance hereunder. If written notice of such delay or impossibility of performance is provided to the other Parties within a reasonable time after the commencement of such delay or condition of impossibility, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the Parties in writing, or the performance rendered impossible may be excused in writing by the Party so notified. In no event shall adverse market or financial conditions constitute an event of force majeure extending the time for such Party's performance hereunder. In addition, in no event shall the Term of this Agreement be extended by an event of force majeure.

14. ANNUAL REVIEW.

14.1 Timing of Annual Review. During the Term of this Agreement, at least once during every twelve (12) month period from the Effective Date, City shall review the good faith compliance of the Developer Parties with the terms of this Agreement ("Annual Review"). The Annual Review shall be conducted by the City Council or its designee in accordance with the City Development Agreement Regulations.

14.2 Standards for Annual Review. During the Annual Review, the Developer Parties shall be required to demonstrate good faith compliance with the terms of this Agreement. If City or its designee finds and determines that a Developer Party has not complied with any of the terms or conditions of this Agreement, then City may declare a default by such Developer Party in accordance with Section 13 herein. City may exercise its rights and remedies relating to any such event of default only after the period for curing a default as set forth in Section 13 has expired without cure of the default. The costs incurred by City in connection with the Annual Review process shall be paid by the Developer Parties.

14.3 Certificate of Compliance. With respect to each year in which City approves a Developer Party's compliance with this Agreement, City shall, upon written request by the Developer Party, provide the Developer Party with a written certificate of good faith compliance within thirty (30) days of City's receipt of the Developer Party's request for same.

15. MORTGAGEE RIGHTS.

15.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit any of the Developer Parties, in any manner, from encumbering the Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

15.2 Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement and any such Mortgagee who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

15.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 15, a Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of any of the Developer Parties or other affirmative covenants of the Developer Parties hereunder, or to guarantee such performance, except that (i) the Mortgagee shall have no right to develop the Property under the Overlay Plan without fully complying with the terms of this Agreement and (ii) to the extent that any covenant to be performed by a Developer Party is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder.

15.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure. Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of the results of the Annual Review and of any default by a Developer Party of its obligations set forth in this Agreement. Each Mortgagee shall have a further right, but not an obligation, to cure such default within ten (10) days after receipt of such notice (for monetary defaults), within thirty (30) days after receipt of such notice (for non-monetary defaults) or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through

a receiver or otherwise, and to remedy or cure such default within thirty (30) days after obtaining possession, and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement until expiration of such thirty (30) day period; provided, however, that in the case of a default which cannot with diligence be remedied or cured within such thirty (30) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default provided Mortgagee promptly commences to cure the default within the thirty (30) day period and diligently prosecutes such cure to completion.

16. ASSIGNMENT.

16.1 Right to Assign. Subject to City's consent pursuant to Section 16.3, each Developer Party shall have the right to assign its rights and obligations under this Agreement in connection with a transfer of the Developer Party's interest in the Property. In the event of any such assignment, the assignee shall be liable for the performance of all obligations of the Developer Party with respect to the portion of the Property so transferred.

16.2 Assignee Subject to Terms of Agreement. Following an assignment or transfer of any of the rights and interests of a Developer Party set forth in this Agreement in accordance with Section 16.3, the assignee's exercise, use, and enjoyment of the Property shall be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer Party.

16.3 Release Upon Transfer. Upon the written consent of City to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assumption in a form approved by City of such assigned obligations of the Developer Party under this Agreement by the assignee, the Developer Party shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent the Developer Party is in default hereunder prior to said transfer.

17. INSURANCE AND INDEMNITY.

17.1 Insurance. Each Developer Party shall procure and maintain, at all times during the Term of this Agreement when actual work on the Project is being performed by that Developer Party, the following policies of insurance:

(i) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than \$5,000,000 combined single limits.

(ii) Automobile Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (A) bodily injury liability limits of \$2,000,000 per person and \$2,000,000 per occurrence and property damage liability limits of Five Hundred Thousand Dollars \$500,000 per occurrence and \$500,000 in the aggregate or (B) combined single limit liability of \$2,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(iii) Workers' Compensation Insurance. A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California and rated "A:VII" or better in the most recent edition of Best's Insurance Guide. All of the aforescribed policies of insurance shall be primary insurance and shall name City, City's Designee(s), and each of their respective officers, officials and employees as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City, City's Designee, and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days prior written notice to City. In the event any of said policies of insurance are cancelled, the applicable Developer Party shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 17.1. No work to be performed by a Developer Party pursuant to this Agreement shall commence until the Developer Party has provided City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverage and said certificates or binders are approved by City.

17.2 Indemnity. Each of the Developer Parties agrees to indemnify, defend, and hold harmless City, City's Designee, and their respective elected and appointed councils, boards, commissions, officers, agents, and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of such Developer Party or the Developer Party's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement. Notwithstanding the foregoing, City shall have the right to select and retain counsel to defend any such action or actions and the Developer Party shall pay the cost thereof. The indemnity provisions set forth in this Agreement shall survive termination of this Agreement.

18. THIRD PARTY LEGAL CHALLENGE.

In the event of any legal action instituted by any third party challenging the validity or enforceability of any provision of this Agreement, the Existing Land Use Regulations, or the Great Park Plan ("Third Party Legal Challenge"), City shall have the right but not the obligation to defend such Third Party Legal Challenge and the Developer Parties shall be responsible for the legal expenses incurred by City in connection therewith. The Developer Parties also shall have the right but not the obligation to defend any Third Party Legal Challenge. If a Developer Party defends any such Third Party Legal Challenge, so long as the Developer Parties are not in default hereunder, City shall not allow any default or judgment to be taken against it or compromise the defense of the action without the Developer Party's prior written approval. The Developer Party defending the Third Party Legal Challenge shall further have the right to settle such Third Party Legal Challenge, provided that nothing herein shall authorize the Developer Party to settle such Third Party Legal Challenge on terms that would constitute an amendment or modification of this Agreement, the Existing Regulations or the Great Park Plan unless such amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto.

In the event City elects to defend the Third Party Legal Challenge, the Developer Parties shall indemnify and hold harmless City and its officials and employees from and against any claims, losses, or liabilities assessed or awarded against City by way of judgment, settlement, or stipulation. If a Developer Party defends any such Third Party Legal Challenge, the Developer Party defending the action shall indemnify and hold harmless City and its officials and employees from and against any claims, losses, or liabilities assessed or awarded against City by way of judgment, settlement, or stipulation.

19. MISCELLANEOUS.

19.1 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

19.2 Entire Agreement; Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements among the Parties with respect to all or part of the subject matter hereof. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by any other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Parties with the terms of this Agreement thereafter. Any amendments or modifications to this Agreement must be in writing, signed by duly authorized representatives of each of the Parties hereto, and recorded in the Official Records of Orange County, California.

19.3 Legal Expenses. In any judicial proceeding, arbitration, or mediation (collectively, "Action") between City and a Developer Party seeking enforcement of any of the terms and provisions of this Agreement, the prevailing Party in such Action shall be awarded all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

19.4 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

19.5 No Third Party Beneficiaries. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successors in interest), and not for the benefit of any other individual or entity.

19.6 Relationship of Parties. City and the Developer Parties hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and any Developer Party joint venturers or partners.

19.7 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of any Party has been materially altered or abridged by such holding.

19.8 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other Parties to the extent necessary to implement this Agreement. Upon the request of a Party at any time, the other Parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

19.9 Estoppel Certificate. Any Party hereunder may, at any time, deliver written notice to any other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Party; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within sixty (60) days following the receipt thereof. Any third party including a Mortgagee shall be entitled to rely on the Certificate.

19.10 Applicable Law; Venue. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. Any action at law or in equity arising under this Agreement or brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California or the United States District Court for the Central District of California, Santa Ana Division, and the Parties hereto waive all provisions of law providing for the removal or change of venue to any other court.

19.11 Non-Liability of City Officers and Employees. No official, officer, employee, agent or representative of City shall be personally liable to any of the Developer Parties or their respective successors and assigns for any loss arising out of or connected with this Agreement, the Existing Land Use Regulations or the Great Park Plan.

19.12 Notices. Any notice or communication required hereunder between City and a Developer Party must be in writing and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile transmission. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated hereinbelow as the Party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Notices delivered by facsimile transmission shall be deemed to have been given on

the first business day following the date of transmission to the facsimile number. A Party hereto may at any time, by giving ten (10) days' written notice to the other Parties hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:

City of Irvine
City Hall
One Civic Center Plaza
Irvine, CA 92623-9575
Attn: Director of Community Development
Telephone: (949) 724-6451
Telecopy: (949) 724-6440

With a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Attn: Joel D. Kuperberg, Esq.
Telephone: (714) 641-5100
Telecopy: (714) 546-9035

If to Developer I:

Attn: _____
Telephone: _____
Telecopy: _____

With a copy to:

Attn: _____
Telephone: _____
Telecopy: _____
Telecopy: _____

If to Developer II:

Attn: _____
Telephone: _____
Telecopy: _____

With a copy to:

Attn: _____
Telephone: _____
Telecopy: _____

If to Developer III:

Attn: _____
Telephone: _____
Telecopy: _____

With a copy to:

Attn: _____
Telephone: _____
Telecopy: _____

If to Developer IV:

Attn: _____
Telephone: _____
Telecopy: _____

With a copy to:

Attn: _____
Telephone: _____
Telecopy: _____

19.13 Representation as to Ownership. Subject to its acceptance of one or more LIFOCs conveying a portion of its Parcel, each Developer Party represents and warrants as follows: Developer I represents and warrants to City that it is the owner in fee of Parcel I. Developer II represents and warrants to City that it is the owner in fee of Parcel II. Developer III represents and warrants to City that it is the owner in fee of Parcel III. Developer IV represents and warrants to City that it is the owner in fee of Parcel IV.

19.14 Authority to Execute. Each Developer Party warrants and represents that (i) it is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, the Developer Party is formally bound to the provisions of this Agreement, (iv) the Developer Party's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other agreement to which the Developer

Party is bound, and (v) there is no existing or threatened litigation or legal proceeding of which the Developer Party is aware which could prevent the Developer Party from entering into or performing its obligations set forth in this Agreement.

[19.15 Counterparts and Exhibits.](#) This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument. This Agreement contains eleven (11) exhibits, attached hereto and made a part hereof by this reference. Said exhibits are identified as follows:

A	Legal Description of Property
B	Conceptual Overlay Plan
C	Great Park Plan
D	North Irvine Transportation Mitigation Ordinance
E	CFD Apportionment and Methodology
F	CFD Petition
G	Legal Descriptions of City Conveyance Parcels
H	Ownership Interests in City Conveyance Parcels
I	Grant Deed Form
J	Water Rights Quitclaim Deed Form
K	CC&Rs
L	Utilities Quitclaim Deed Form
M	Form of Assignment of LIFOCs

[Signatures on next page]

IN WITNESS WHEREOF, City, Developer I, Developer II, Developer III, and Developer IV have executed this Agreement as of the date first written above.

“CITY”

CITY OF IRVINE,
a municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Joel D. Kuperberg
City Attorney

“DEVELOPER I”

a _____

By: _____

Its: _____

By: _____

Its: _____

“DEVELOPER II”

a _____

By: _____

Its: _____

By: _____

Its: _____

“DEVELOPER III”

a _____

By: _____

Its: _____

By: _____

Its: _____

“DEVELOPER IV”

a _____

By: _____

Its: _____

By: _____

Its: _____

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

[illegible]

On _____, before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

PARCEL I

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

PARCEL II

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

PARCEL III

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

PARCEL IV

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

EXHIBIT “B”

CONCEPTUAL OVERLAY PLAN

[Attached]

[Attach map delineating the boundaries of Parcels I, II, III, and IV, and depicting the conceptual plan for development of the project under the Overlay Plan and boundaries of the planning area zones and various land uses, including the Corridor Sites, Educational Site, Exposition Center South Site, Existing Golf Course Site, New Golf Course Site, Musick/Alton Sites, Park Site, Sports Park Site, School Site, and Transit Site.]

EXHIBIT “C”

GREAT PARK PLAN

[Attach Table 3-2 of EIR and note which PAZs are in each Parcel]

EXHIBIT “D”

NORTH IRVINE TRANSPORTATION INFRASTRUCTURE ORDINANCE

[Attached]

EXHIBIT “E”

CFD APPORTIONMENT AND METHODOLOGY

[Attached]

EXHIBIT "F"

CFD PETITION

**PETITION FOR ESTABLISHMENT OF A
COMMUNITY FACILITIES DISTRICT UNDER THE
MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982**

TO THE CITY COUNCIL OF THE CITY OF IRVINE:

Pursuant to Sections 53318 and 53319 of the California Government Code, the undersigned, as the authorized representative of _____, a _____ ("_____"), hereby represents and petitions as follows:

1. _____ is the owner of a portion of real property situated within the boundary line shown on the exhibit map attached hereto as Exhibit "1," pertaining to real property situated within the incorporated area of the City of Irvine.

2. _____ hereby petitions this City Council (this "Council") to do the following:

a. to initiate and conduct legal proceedings pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (the "Act"), to establish a community facilities district to be known as "Community Facilities District No. _____, City of Irvine, State of California" ("CFD No. _____") to encompass the real property shown on Exhibit "F-1" for the purpose of financing the acquisition and construction of the public capital facilities (the "Facilities") and certain services (the "Services") described in Exhibit "F-2" attached hereto and related incidental expenses of the proceedings and special tax bond financing;

b. to conduct a landowner-voter election in accordance with the Act to obtain authorization to levy a special tax and to issue special tax bonds as shall be more fully

established during the course of the requested legal proceedings for establishment of CFD No. _____; and

c. upon successful completion of the legal proceedings for establishment of CFD No. _____ and the subject election, and subject to such terms and conditions as this Council may establish, to utilize this Council's best efforts to accomplish issuance and sale of special tax bonds as authorized to finance the acquisition and construction of the Facilities and the related incidental expenses of the proceedings and bond financing and to levy an additional special tax in CFD No. _____ sufficient to fund the services.

Respectfully submitted,

_____,
a _____

By _____
(Signature)

(Print Name)

(Title)

EXHIBIT “F-1”

SITE MAP OF PROPERTY

[To be attached]

EXHIBIT “F-2”

DESCRIPTION OF FACILITIES AND SERVICES

[To be inserted]

EXHIBIT “G”

LEGAL DESCRIPTIONS OF CITY CONVEYANCE PARCELS

[Exhibits G-1, G-2, G-3, G-4, G-5, G-6, G-7 , and G-8 are attached]

EXHIBIT “G-1”

LEGAL DESCRIPTION OF CORRIDOR SITES

CORRIDOR SITE PARCEL I

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

CORRIDOR SITES PARCEL II

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

CORRIDOR SITES PARCEL IV

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-2”

LEGAL DESCRIPTION OF EXPOSITION CENTER SOUTH SITE

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-3”

LEGAL DESCRIPTION OF INSTITUTIONAL SITE

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-4”

LEGAL DESCRIPTION OF MUSICK/ALTON SITES

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-5”

LEGAL DESCRIPTION OF PARK SITE

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-6”

LEGAL DESCRIPTION OF SPORTS PARK SITE

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-7”

LEGAL DESCRIPTION OF TRANSIT SITE

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “G-8”

LEGAL DESCRIPTION OF POLICE SUBSTATION SITE

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[To be inserted]

EXHIBIT “H”

OWNERSHIP INTERESTS IN CITY CONVEYANCE PARCELS

PARCEL I CITY CONVEYANCE PARCELS

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

PARCEL II CITY CONVEYANCE PARCELS

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

PARCEL III CITY CONVEYANCE PARCELS

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

PARCEL IV CITY CONVEYANCE PARCELS

That certain real property located in the City of Irvine, County of Orange, State of California, more particularly described as follows:

[to be inserted]

EXHIBIT "T"
GRANT DEED FORM

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF IRVINE
One Civic Center Plaza
P.O. Box 19575
Irvine, CA 92623-9575
Attn: City Clerk

(Space Above Line for Recorder's Use)

Free recording Requested per Government Code Section 6103.

In accordance with Section 11922 of the California Revenue and Taxation Code, transfer of the property to the City of Irvine is exempt from the payment of a documentary transfer tax.

GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, _____, a _____, hereby grants to the CITY OF IRVINE, a California charter city, that certain real property located in the City of Irvine, County of Orange, State of California, described in the legal description attached hereto as Exhibit "I-1" and incorporated herein by this reference.

Dated: _____, 2003

[SIGNATURE BLOCK TO BE INSERTED]

[illegible]

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

CERTIFICATE OF ACCEPTANCE

This to certify that the interest in real property conveyed by the foregoing Grant Deed, from _____, to the City of Irvine ("City") is hereby accepted by the undersigned officer of the City, on behalf of the City, pursuant to authority conferred by Resolution No. ____ adopted by the City on _____, and City consents to the recordation thereof by its undersigned duly authorized officer.

CITY OF IRVINE

By: _____

Its: _____

ATTEST:

City Clerk

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____,
personally appeared _____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT "I-1"

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Irvine, County of Orange, State of California,
legally described as follows:

[To be inserted]

EXHIBIT "J"

WATER RIGHTS QUITCLAIM DEED FORM

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF IRVINE
One Civic Center Plaza
P.O. Box 19575
Irvine, CA 92623-9575
Attn: City Clerk

(Space Above Line for Recorder's Use)

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, _____, a _____, ("Grantor") does hereby remise, release and forever quitclaim to the CITY OF IRVINE, a California charter city, any and all water, water rights and interests within the real property located in the City of Irvine, County of Orange, State of California more particularly described in Exhibit "J-1" to this deed, which description by this reference is incorporated herein and made a part hereof as though set forth at length herein (the "Property"), whether such water, water rights or interests are surface or subsurface, appurtenant or relating to the Property, or owned or used by the Grantor in connection with the Property (no matter how acquired by Grantor), and whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual.

In witness whereof, this instrument has been executed on _____, 200__.

[SIGNATURE BLOCK TO BE INSERTED]

COUNTY OF _____)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

CERTIFICATE OF ACCEPTANCE

This to certify that the interest in real property conveyed by the foregoing Quitclaim Deed, from _____, to the City of Irvine ("City") is hereby accepted by the undersigned officer of the City, on behalf of the City, pursuant to authority conferred by Resolution No. ____ adopted by the City on _____, and the grantee, City, consents to the recordation thereof by its undersigned duly authorized officer.

CITY OF IRVINE

By: _____

Its: _____

ATTEST:

City Clerk

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT "J-1"

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Irvine, County of Orange, State of California,
legally described as follows:

[To be inserted]

EXHIBIT "K"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Irvine
One Civic Center Plaza
P.O. Box 19575
Irvine, California 92623

Attention: City Manager

(Space Above For Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS
FOR
THE IRVINE GREAT PARK**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND
GRANT OF EASEMENTS is made as of _____, 2003 by**

_____, a _____ (_____),
_____, a _____ (_____),
_____, a _____ (_____),
and _____, a _____ (_____),
(collectively "Declarant").

R E C I T A L S:

A. _____ is the owner of that certain real property located in the City of Irvine, County of Orange, State of California, more particularly described in Attachment "1" attached hereto and incorporated herein by this reference ("Parcel I").

B. _____ is the owner of that certain real property located in the City of Irvine, County of Orange, State of California, more particularly described in Attachment "2" attached hereto and incorporated herein by this reference ("Parcel II").

C. _____ is the owner of that certain real property located in the City of Irvine, County of Orange, State of California, more particularly described in Attachment “3” attached hereto and incorporated herein by this reference (“Parcel III”).

D. _____ is the owner of that certain real property located in the City of Irvine, County of Orange, State of California, more particularly described in Attachment “4” attached hereto and incorporated herein by this reference (“Parcel IV”).

E. Parcel I, Parcel II, Parcel III and Parcel IV are collectively referred to herein as the “Property.”

F. It is the desire and intention of Declarant to develop the Property for agricultural, auto, cemetery, commercial, commercial recreational, community commercial, educational, exposition, general industrial, golf course, institutional, medical and science, open space, park, research and development, residential, transit-oriented development, vehicle-related commercial, and incidental uses, as further described in that certain Development Agreement entered into and recorded concurrently herewith by and between Declarant, as the “Developer Parties,” and the City of Irvine (“City”) in the Official Records (“Development Agreement”), and to impose mutually beneficial restrictions for the maintenance, use, occupancy, and enjoyment of the Property.

G. Declarant hereby declares that the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the maintenance, use, occupancy, and enjoyment of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons having or acquiring any interest in the Property, or any part thereof, and their successive owners and assigns.

1.

DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein have the following specified meanings:

1.1.1 Architectural Committee or Committee. Architectural Committee or Committee means the Architectural Review Committee created pursuant to Article IV hereof.

1.1.2 Articles. Articles means the Articles of Incorporation of the Association, as they may be amended from time to time.

1.1.3 Assessment Chart. Assessment Chart means the Assessment Chart attached hereto and incorporated herein as Attachment “6”. The Assessment Chart assigns a multiplier to each category of zoning in the Property (other than park, recreation, and open space uses under the control of the City or the City’s Transferee), for purposes of determining each Owner’s share of Reconstruction Assessments, Regular Assessments and Special Assessments (an “Owner’s Share of Assessments”). An Owner’s Share of Assessments is calculated by multiplying the acreage, square footage, or number of dwelling units (as the case may be) of each portion of the Owner’s Parcel by the multiplier applicable to the zoning of such portion (whether or not any of said portion is currently, or will ever be, developed for said zoned use).

1.1.4 Association. Association means the _____, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), its successors and assigns.

1.1.5 Association Maintenance Funds. Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article V hereof.

1.1.6 Beneficiary. Beneficiary means a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust and the assignees of such Mortgagee or Beneficiary.

1.1.7 Board. Board means the Association’s Board of Directors who shall be appointed and elected in accordance with the Bylaws.

1.1.8 Budget. Budget means a written, itemized estimate of the Association’s income and Common Expenses prepared by the City or the City’s Transferee, as applicable, and approved by the Board. In the event the Board disputes the figures set forth in the estimate prepared by the City or the City’s Transferee, the Board and the City, or the City’s Transferee, as applicable, shall meet and confer and attempt to reach consensus on the figures. In the event no consensus is reached within sixty (60) days, the dispute shall be resolved in accordance with the dispute resolution procedures set forth in Section 12.12 herein.

1.1.9 Bylaws. Bylaws means the Bylaws of the Association as adopted by the Board, as they may be amended from time to time.

1.1.10 CFD. CFD means the community facilities district described in Article III hereof.

1.1.11 City. City means the City of Irvine, in the County of Orange, State of California, and its various departments, divisions, employees and representatives.

1.1.12 City’s Transferee. City’s Transferee means a governmental entity or non-profit corporation to whom the City has either leased or transferred ownership, control, and/or operation of the Public Property; provided, however, no such transfer shall be effective until the City has provided written notice thereof to the Association.

1.1.13 Close of Escrow. Close of Escrow means the date on which a deed is Recorded conveying a Parcel from one of the entities that comprise Declarant to an Owner.

1.1.14 Common Expenses. Common Expenses means those expenses for which, subject to Article III, the Association is responsible under this Declaration, including the actual and estimated costs of: (a) all necessary landscape maintenance services for the Public Property; (b) maintaining, managing, operating, and repairing the Public Property and maintenance of gas, water and waste pipes, sewers, ducts, chutes, conduits, wires and utility installations which are located within any of the buildings located in the Public Property (“Public Buildings”) or in the exterior walls, ceilings, foundations or foundation slabs within any of the Public Buildings; (c) painting and otherwise maintaining the exterior surfaces of the exterior walls of the Public Buildings; (d) maintaining, managing and controlling the water system for the Public Buildings to the back of each individual water meter; (e) unpaid Special Assessments and Reconstruction Assessments; (f) all utilities metered to the Public Property; (g) trash collection and removal related to the Public Property; (h) maintaining signs on the Public Property; (i) any necessary janitorial services for maintaining the Public Property; (j) maintaining the public streets, sidewalks, curbs, gutters, and traffic signal facilities located within, and adjacent to, the Property; (k) managing and administering the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; (l) reimbursement to the City for municipal police services, security, and other services benefiting the Public Property; (m) errors and omissions and directors, officers, and agents liability insurance, and other insurance covering the directors, officers and agents of the Association; (n) bonding the members of the Board; (o) taxes, if any, paid by the Association, including real property taxes and assessments separately levied against the Public Property; (p) discharging of any lien or encumbrance levied against the Public Property, or portions thereof; and (q) all other costs incurred by the Association, for any reason whatsoever in connection with the Property, for the benefit of the Public Property.

1.1.15 Declarant. Declarant means collectively, _____, _____, and _____, and all of the respective successors, and any Person to which any of them shall have assigned any of their rights hereunder by an express written assignment, which assignment has been approved by the City. As used in this Section, “successor” means a Person who acquires any of the entities that comprise Declarant or substantially all of said entity’s assets, or who merges with one of said entities, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise.

1.1.16 Declaration. Declaration means this document as it may be amended.

1.1.17 Design Guidelines. Design Guidelines means those certain Design Guidelines prepared and approved in accordance with Article IV hereof.

1.1.18 Development Agreement. Development Agreement means that certain Development Agreement described in Recital F hereof.

1.1.19 Improvements. Improvements means all structures and appurtenances thereto, including but not limited to, buildings, walkways, sprinkler pipes, driveways, parking areas, walls, stairs, roofs, solar panels and related facilities, irrigation equipment and related facilities, exterior lighting, antennae and landscaping.

1.1.20 LLMD. LLMD means the landscaping and lighting maintenance district described in Article III.

1.1.21 Member. Member means any Person holding a Membership.

1.1.22 Membership. Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.1.23 Mortgage. Mortgage means any Recorded mortgage or deed of trust or other conveyance of one or more Parcels or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance.

1.1.24 Mortgagee, Mortgagor. Mortgagee means a Person to whom a Mortgage is made and includes the Beneficiary of a deed of trust. Mortgagor means a Person who mortgages his or her property to another (i.e., the maker of a Mortgage), and includes the Trustor of a deed of trust. The term “Trustor” is synonymous with the term “Mortgagor” and the term “Beneficiary” is synonymous with the term “Mortgagee.”

1.1.25 Notice and Hearing. Notice and Hearing means written notice and a hearing before the Board, as further provided in the Bylaws.

1.1.26 Official Records. Official Records shall mean the Orange County Recorder’s Office.

1.1.27 Owner. Owner means the Person or Persons, including each of the entities that comprise Declarant, holding fee simple interest to a Parcel. The term “Owner” includes a seller under an executory contract of sale but excludes Mortgagees or any person merely having a security interest for the performance of an obligation.

1.1.28 Parcel. Parcel means each portion of the Property that constitutes a separate legal parcel and that is held under separate ownership.

1.1.29 Person. Person means a natural individual or any other entity with the legal right to hold title to real property.

1.1.30 Property. Property means, collectively, the Public Property and all of the real property described in Recitals A, B, C, and D to this Declaration.

1.1.31 Public Building. Public Building means a building or portion thereof located within the Public Property.

1.1.32 Public Property. Public Property means all of the real property within the Property that is owned in fee by the City or the City’s Transferee, or over which the City or the City’s Transferee has an easement for public right-of-way, drainage, wildlife, conservation or open space purposes, and includes, but is not limited to, all public streets and sidewalks, parks, sportspark, museum district, transit facilities, drainage corridors and wildlife corridors within the

Property. Any references in this Declaration to Public Property are references to the Public Property as a whole and to portions thereof. The Public Property is more particularly described on Attachment “5”, attached hereto and incorporated herein by this reference.

1.1.33 Reconstruction Assessment. Reconstruction Assessment means a charge which the Board may levy against the Owners of Parcels and said Parcels, representing a portion of the cost to maintain, repair, or replace, or reconstruct any Improvements on the Public Property. Unless set forth otherwise herein, such charge shall be levied among said Owners and their Parcels in accordance with the Assessment Chart.

1.1.34 Recordation, Record. Recordation means, with respect to any document, the recordation of such document in the Office of the Orange County Recorder. Record means to cause the Recordation of a document.

1.1.35 Regular Assessment. Regular Assessment means a charge against the Owners and their Parcels, representing a portion of the Common Expenses, which are to be levied as provided herein.

1.1.36 Restrictions. Restrictions means this Declaration, the Articles, and the Bylaws of the Association.

1.1.37 Special Assessment. Special Assessment means either (a) a charge against a particular Owner and the Owner’s Parcel directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the Restrictions, or (b) a reasonable fine or penalty assessed by the Board for a violation of the Restrictions, plus interest and other charges on such Special Assessments as provided for herein. Special Assessments may include any late payment penalties, interest charges or costs (including attorneys’ fees) incurred by the Association in the collection of Regular or Reconstruction Assessments.

2.

IRVINE GREAT PARK OWNERS ASSOCIATION

2.1.1 Organization of Association. The Association is or shall be incorporated under the name of _____ Association, as a corporation not for profit organized under the California Nonprofit Mutual Benefit Corporation Law.

2.1.2 Duties and Powers. The Association has the duties and powers set forth in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers set forth in the Restrictions. Without limiting the foregoing, the Association may at any time and from time to time:

2.1.2.1 Levy assessments to fund certain repair and maintenance, as described in Section 2.7;

2.1.2.2 Have the power and the duty to exercise all voting rights accorded the Association under this Declaration, which voting rights shall be exercised by the Board on behalf of the Association in a manner which, in the Board's sole discretion, enhances the value, desirability and attractiveness of the Property; and

2.1.2.3 Keep and preserve separate and complete books of account covering the Common Expenses, which any Owner and/or its authorized representatives shall have the right to examine and/or copy at such Owner's sole cost and expense during reasonable business hours, following reasonable notice.

2.1.3 Membership. Every Owner shall automatically be a Member and shall remain a Member until such Owner's Parcel ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Parcel is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Parcel has been transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Parcel. The rights, duties, privileges and obligations of all Members are as provided in the Restrictions.

2.1.4 Transfer. The Membership of any Owner may not be transferred, pledged or alienated in any way, except upon the transfer or encumbrance of such Owner's Parcel, and then only to the transferee or Mortgagee of such Parcel. A prohibited transfer is void and will not be reflected upon the books and records of the Association. A Member who has sold his Parcel to a contract purchaser under an agreement to purchase may delegate his Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Board before the contract purchaser may vote. The contract seller shall remain liable for all charges and assessments attributable to the contract seller's Parcel which accrue before fee title to the Parcel is transferred. If an Owner fails or refuses to transfer his Membership to the purchaser of such Owner's Parcel upon transfer of fee title thereto, the Board may record the transfer upon the Association's books. Until satisfactory evidence of such transfer has been presented to the Board, the purchaser will not be entitled to vote at Association meetings. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Parcel (which fee shall be paid through escrow or added to the Regular Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

2.1.5 Classes of Membership. The Association shall have two (2) classes of voting Membership as follows:

Class A Members are those Owners with the exception of Declarant. Each Class A Member is entitled to one (1) vote for each Parcel owned by it. When more than one (1) Person owns any Parcel, all such Persons are Members. However, the vote for such Parcel shall be exercised in accordance with Section 2.6, but no more than one (1) Class A vote may be cast for any Parcel.

Class B Members are the entities that comprise Declarant. Each Class B Member is entitled to one hundred (100) votes so long as said member owns at least two hundred

(200) acres of real property in the Property. After the time a Class B Member owns less than two hundred (200) acres of real property in the Property, said Class B Member shall be entitled to one (1) vote for each acre owned by it, until all such acres have been parcelized, at which time such Class B Member shall become a Class A Member.

2.1.6 Voting Rights. All voting rights are subject to the Restrictions. When more than one (1) Person holds an interest in any Parcel (“co-owners”), all such co-owners are Members and may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the votes to which the Parcel is entitled. Co-owners owning the majority interests in a Parcel may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the votes for each Parcel shall be exercised, if at all, as one unit. Where no voting co-owner is designated or if the designation has been revoked, the votes for the Parcel shall be exercised as the co-owners owning the majority interests in the Parcel agree. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the corresponding voting co-owner is acting with his co-owners’ consent. No votes may be cast for any Parcel if the co-owners present in person or by proxy owning the majority interests in such Parcel cannot agree to said votes or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all of the obligations imposed upon the jointly-owned Parcel and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

2.1.7 Repair and Maintenance Funded by the Association. Subject to Article III and Article V, the Association shall pay, out of the Association Maintenance Funds, for all of the Common Expenses. The City or City’s Transferee, as applicable, shall determine, in its sole discretion, the level and frequency of maintenance of the Public Property. Notwithstanding anything to the contrary herein, the Association shall have authority only to fund the repair and maintenance work and activities described in this Section, all of which shall be undertaken and performed by the City or the City’s Transferee, as applicable.

2.1.8 Segregated Real Property Taxes. The Owner of each Parcel shall be responsible for, and shall pay prior to delinquency, all real and personal property taxes and assessments levied against its Parcel.

2.1.9 Repair and Maintenance by Owners. Each Owner at his sole cost shall landscape, maintain, repair, replace, paint, and restore or cause to be so landscaped, maintained, repaired, replaced and restored, at his or her sole expense, all portions of its Parcel, including all Improvements located within the Parcel, including but not limited to the windows, doors, light fixtures actuated from switches controlled from, or separately metered to, any buildings located within such Owner’s Parcel, and the walls, ceilings, floors, permanent fixtures, utilities (including plumbing), heating, ventilation and air conditioning systems, exterior walls, foundations and foundation slabs of any such building in a clean, sanitary and attractive condition and in good order and repair. Each Owner shall also maintain and repair any internal or external telephone wiring wherever located which is designed to serve only its Parcel and the Improvements located with the Parcel. Each Owner shall pay when due all charges for any utility service which is separately metered to its Parcel. Each Owner shall pay all costs for trash collection and removal related to its Parcel and Improvements.

3.

ASSOCIATION'S OBLIGATION FOR ASSESSMENTS

3.1.1 Community Facilities District. As further described in the Development Agreement, the City may form a community facilities district ("CFD") and levy a special tax, to cover, among other things, a portion of the Common Expenses ("CFD Maintenance Costs"), pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code §§ Section 53311 et seq.). In the event the CFD is not formed, or the CFD is formed but the special tax levied by the CFD is repealed or is otherwise insufficient to pay all of the CFD Maintenance Costs, or the CFD is terminated or is deemed invalid by a court of competent jurisdiction (an "Event of CFD Deficiency"), the Association shall, immediately and without further action or notice, become obligated to pay, through Regular Assessments, all of the CFD Maintenance Costs. The CFD Maintenance Costs are all of costs for maintaining the Public Property, less the LLMD Maintenance Costs.

3.1.2 Formation of Landscaping and Lighting Maintenance District. As further described in the Development Agreement, the City may consider establishing a landscaping and lighting maintenance district ("LLMD") to cover the portion of the Common Expenses that covers maintenance of the landscaping, lighting, streets, and park and recreational facilities within the Public Property ("LLMD Maintenance Costs"), pursuant to the procedures set forth in City's charter and Municipal Code and, to the extent applicable, the Landscaping and Lighting Act of 1972 (Streets and Highways Code §§ 22500, et seq.). In the event the LLMD is not formed, or the LLMD is formed but the assessment levied by the LLMD is repealed or is otherwise insufficient to pay all of the LLMD Maintenance Costs, or the LLMD is terminated or is deemed invalid by a court of competent jurisdiction (an "Event of LLMD Deficiency"), the Association shall, immediately and without further action or notice, become obligated to pay, through Regular Assessments, all of the LLMD Maintenance Costs.

3.1.3 Timing of Assessments. The Association's obligation to fund the CFD Maintenance Costs shall commence on the occurrence of an Event of CFD Deficiency. The Association's obligation to fund the LLMD Maintenance Costs shall commence on the occurrence of an Event of LLMD Deficiency. If an Event of CFD Deficiency or an Event of LLMD Deficiency occurs prior to the time Regular Assessments on the Parcels have commenced, Declarant shall fund such maintenance costs, in accordance with the Assessment Chart. The duty of the Association to levy, assess, collect, enforce and deliver to the City (or the City's Transferee) all of the Regular Assessments necessary to pay all of the CFD Maintenance Costs and/or the LLC Maintenance Costs is absolute and not subject to set-off or waiver. The City and/or the City's Transferee, as applicable, may enforce this provision.

3.1.4 Abandonment. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release such Owner's Parcel from the liens and charges thereof.

4.

ARCHITECTURAL REVIEW COMMITTEE

4.1.1 Members of Committee. The Architectural Review Committee, sometimes referred to herein as the “Architectural Committee” or the “Committee,” shall be composed of five (5) members. The initial members of the Committee shall be appointed, removed and replaced by the City and by the entities which comprise Declarant (with each of the City and the entities comprising Declarant appointing one (1) member) and having the authority to remove and replace said member) until the date that is two (2) years following the date this Declaration is Recorded (“Second Anniversary”). After the Second Anniversary the Board may appoint two (2) members of the Committee, and each of the City (or the City’s Transferee) and the members comprising Declarant may continue to appoint and remove and replace its one (1) member of the Committee until the date that is five (5) years following the date this Declaration is Recorded, after which the Board may appoint and remove all of the members of the Committee. Committee members appointed by the Board must be Members or agents of Members, but Committee members appointed by Declarant need not be Members. Board members may also serve as Committee members.

4.1.2 Preparation and Approval of Design Guidelines The Committee has the right and duty to promulgate a comprehensive set of design guidelines applicable to all development in the Property within one (1) year after establishment of the initial Committee (“Design Guidelines”). The Design Guidelines shall include, without limitation, guidelines, limitations, and restrictions on all of the following:

4.1.2.1 The construction, reconstruction, placement, addition, change or alteration of any Improvement, including the nature, kind, shape, materials, exterior color, location, and height of such Improvement, as well as all landscaping to be planted or installed; and

4.1.2.2 The species and placement of any trees, plants, shrubbery, ground cover, etc., to be placed, planted, irrigated and maintained in the Property (e.g., approved landscape palettes), including requirements regarding the use of root barriers and/or other similar devices to prevent damage to any of the Improvements or hardscape, located in the Property.

The Design Guidelines shall be approved by at least three (3) members of the Committee, one of which shall be the City or the City’s Transferee, as applicable.

4.1.3 Development in Accordance with Design Guidelines. All construction, installation or alteration of an Improvement, including landscaping, within a Parcel in the Property (a) shall be consistent with the Design Guidelines, (b) shall not be detrimental to the appearance of the surrounding area of the Property as a whole, (c) shall be in harmony with the surrounding structures, (d) shall not detract from the beauty, wholesomeness and attractiveness of the Public Property or the enjoyment thereof by the Members of the Public, and (e) shall be in accordance with any conditions or permit requirements of the City and all other governmental entities having jurisdiction over the applicable Parcel. Without limiting the generality of the foregoing, the provisions of this Article IV apply to the construction, installation and alteration

of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the City Building Code, applicable zoning regulations, and associated City ordinances.

4.1.4 Meetings of the Committee. The Committee shall meet as necessary to perform its duties. The Committee may, by resolution unanimously adopted in writing, designate a “Committee Representative” (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee except the granting of variances pursuant to Section 4.7. In the absence of such designation, the vote or written consent of a majority of the Committee constitutes an act of the Committee.

4.1.5 Compensation of Members. The Committee’s members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

4.1.6 Inspection of Work. The Committee or its duly authorized representative may inspect any work of Improvement (“Work”) within the Property to ensure compliance with the Design Guidelines upon reasonable notice to Owner. The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance (“Noncompliance”). The Committee’s right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the date the City issues a certificate of occupancy or completes its final inspection of the Work (or, for Work for which no certificate of occupancy is issued or City inspection is required, the date the Work was completed). If the Committee fails to send a notice of noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the Design Guidelines. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification from the Committee, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board decision is given to the Owner. If the Owner does not comply with the Board decision within that period, the Board may record a Notice of Noncompliance and commence a lawsuit for damages and/or injunctive relief to remedy the Noncompliance.

4.1.7 Variances. The Committee may authorize variances from compliance with any of the architectural provisions of the Design Guidelines and/or this Declaration, including without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, location of property lines or landscaping, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective upon Recordation in the Official Records. After Declarant has lost the right to appoint a majority of the Committee’s members, the Board must approve any variance recommended by the Committee before any such variance becomes effective. If such variances are granted, no violation of the Restrictions shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance does not waive any of the terms and provisions of this Declaration for any purpose except as to the

particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all City land use, zoning, and building requirements and restrictions, and all other applicable governmental requirements, affecting the use of its Parcel and related Improvements.

4.1.8 Appeals. For so long as Declarant has the right to appoint and remove a majority of the Committee's members, the Committee's decisions are final, and there is no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the Committee's members, the Board may adopt policies and procedures for the appeal of Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures, and in the absence of Board adoption of appeal procedures, all Committee decisions are final.

5.

ASSESSMENTS

5.1.1 Creation of Lien. Declarant, for each Parcel owned by it, hereby covenants to pay, and each Owner, by acceptance of a deed to a Parcel, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association (a) Regular Assessments, (b) Special Assessments, and (c) Reconstruction Assessments, which assessments are to be established and collected as provided herein. The Association may not levy or collect any Regular Assessment, Special Assessment or Reconstruction Assessment that exceeds the amount anticipated to be necessary for the purpose for which it is levied. Except as provided in this Section, all such assessments (other than Special Assessments), together with interest, costs, and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien on the Parcel against which such assessment is made. Each such assessment (including Special Assessments), together with interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Parcel at the time when the assessment fell due. The personal obligation for delinquent assessments may not pass to any new Owner and shall bind such Owner's successors and assigns.

5.1.2 Maintenance Funds of Association. The Board shall establish no fewer than two (2) separate Association Maintenance Funds accounts into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the Association's performance of functions under this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an "Operating Fund" for current Common Expenses, (b) an adequate "Reserve Fund" for the deposit of Reserves attributable to Improvements within the Public Property (which would not reasonably be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for insurance policies which the Association obtains as provided in Section 9.2 hereof, and (c) any other funds which the Board may establish to the extent necessary under the Declaration's provisions. The Board shall be authorized to commingle the Operating Fund and Reserve Fund provided that the integrity of each individual Maintenance Fund shall be preserved in the books of the Association by separately accounting for disbursements from, and deposits to, each Maintenance Fund. Nothing contained herein precludes the establishment of additional Maintenance Funds by the Association, so long as the

amounts assessed, deposited into, and disbursed from any such Fund are designated for purposes authorized by this Declaration.

5.1.3 Purpose of Assessments. The assessments shall be used exclusively to fund the City's or the City's Transferee's, as applicable, operation, replacement, improvement and maintenance of the Public Property, and to discharge any other Association obligations under the Declaration. All amounts deposited into the Maintenance Funds must be used solely for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein, other than those purposes for which disbursements from the Reserve Fund are to be used.

5.1.4 Commencement and Collection of Assessments. Regular Assessments shall commence on all Parcels in the Property on the first day of the first calendar month following the first Close of Escrow in the Property. All Regular Assessments shall be assessed in accordance with the Assessment Chart. Regular Assessments for fractions of any month involved shall be prorated. The Board shall fix the amount of the Regular Assessment against each Parcel at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to each Owner of a Parcel at least ten (10) days prior to the beginning of each fiscal year of the Association. The Board shall levy Regular Assessments in amounts sufficient to satisfy the Common Expenses, as set forth in the most current Budget; provided, however, that notwithstanding anything in this Section 5.4 to the contrary, the Regular Assessments shall not include the amounts necessary to cover the portion of the Common Expenses that is composed of the CFD Maintenance Costs or the LLMD Maintenance Costs unless and until an Event of CFD Deficiency or an Event of LLMD Deficiency, respectively, occurs. If the City, or the City's Transferee (as applicable) determines that the estimate of total charges for the current year is or will become inadequate to meet all expenses for the Public Property for any reason, it shall immediately determine the approximate amount of the inadequacy and notify the Board, in writing, of said amount. The Board shall have the authority to levy, at any time by a majority vote, a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Parcel. Written notice of any change in the amount of any Regular Assessment shall be sent via first-class mail to every Owner subject thereto not less than ten (10) nor more than sixty (60) days prior to the increased Regular Assessment becoming due.

The Board may determine that funds in the Operating Fund at the end of the fiscal year be retained and used to reduce the following fiscal year's Regular Assessment. Upon dissolution of the Association, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such monies were collected from the Owners. Each Owner of a Parcel shall pay to the Association his Regular Assessment in installments at such frequency and in such amounts as may be established by the Board, but not more frequent than monthly. Each installment of Regular Assessments may be paid by the Owner to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds.

5.1.5 Reconstruction Assessments. After the time an Event of CFD Deficiency has occurred, the Board may levy, in any fiscal year, a Reconstruction Assessment applicable to that fiscal year only to defray, in whole or in part, the cost of any construction, reconstruction,

repair or replacement of an Improvement or other such addition upon the Public Property, including fixtures and personal property related thereto.

5.1.6 Special Assessments. The Board may levy Special Assessments against a Parcel for the purposes and reasons herein described. The Board shall notify the Owner of any such Parcel in writing of the levying of a Special Assessment and shall specify the date such Special Assessment is due, which date shall not be less than twenty (20) days after such written notice.

5.1.7 Delinquency and Acceleration. Any installment of an assessment is delinquent if not paid within fifteen (15) days of the due date established by the Board. Any installment of Regular Assessments, Special Assessments, or Reconstruction Assessments not paid within fifteen (15) days after the due date, plus all reasonable costs of collection (including reasonable attorneys' fees) and late charges as provided herein bears interest at the maximum rate permitted by law commencing fifteen (15) days from the due date until paid. The Association need not accept any tender of a partial payment of an assessment installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender does not waive the Association's right to demand and receive full payments thereafter. If any installment of an Assessment is not paid within fifteen (15) days after its due date, the Board may mail a notice to the Owner and to each first Mortgagee of a Parcel which has requested a copy of the notice. Such notice shall specify (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than fifteen (15) days from the date the notice is mailed to the Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessment for the then current fiscal year and sale of the Parcel pursuant to a foreclosure. If the delinquent installments of the Assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board, in addition to all legal and equitable rights and remedies, at its option may declare all of the unpaid balance of the Assessment for the then current fiscal year, attributable to that Owner and his Parcel, to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.

5.1.8 Notice and Release of Lien. No action may be brought to enforce any Assessment lien created herein unless at least thirty (30) days has expired following the date a "Notice of Lien" is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Parcel, and a copy thereof has been Recorded in the Official Records by the Association. The Notice of Lien shall become effective upon Recordation by the Board or its authorized agent securing the payment of any Assessment or installment thereof levied by the Association against any Parcel Owner. The Notice of Lien must recite (i) the nature of the default and amount of the assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient legal description of the Parcel against which the same has been assessed, (iv) the Association's name and address, (v) the name of the record Owner thereof, and (vi) in order for the lien to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Lien must be signed by an authorized Association officer or agent or if no one is

designated, by the President, and must be mailed in the manner set forth in California Civil Code Section 2924b to the record owner of the Parcel no later than ten (10) calendar days after recordation. The lien relates only to the individual Parcel against which the assessment was levied and not to the Property as a whole. Upon payment of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board shall cause to be Recorded a notice of satisfaction and release of lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the applicable Owner to pay a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Notice of Release before Recording it. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Parcel created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith.

5.1.9 Enforcement of Liens. The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Parcel may be enforced by sale of the Parcel by the Association, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Assessment, or installment thereof, as provided herein. The sale to foreclose an Assessment lien shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages including Sections 2924, 2924b, 2924c and 2924f of the Civil Code, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Lien was Recorded (as provided in Section 5.8 above) and (b) at least fifteen (15) days have elapsed since a copy of the Notice of Lien was mailed to the Owner affected thereby. The Association may bid on the Parcel at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of any building located on the defaulting Owner's Parcel and related Improvements, and the defaulting Owner shall be required to pay the reasonable rental value for any such building and related Improvements during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments as provided above or to bring an action for injunctive relief.

5.1.10 Priority of Lien. Mortgages Recorded before a Notice of Lien have priority over the Notice of Lien. Sale or transfer of any Parcel does not affect the Assessment lien, except that the sale or transfer of any Parcel pursuant to judicial or non-judicial foreclosure of a Mortgage extinguishes the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Parcel from liens for any assessments thereafter becoming due. No Person who obtains title to a Parcel pursuant to a judicial or non-judicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or

assessments chargeable to such Parcel which became due prior to the acquisition of title to the Parcel by such Person. Such unpaid share of Common Expenses or assessments is a Common Expense collectible from all of the Owner's Parcels including such Person.

5.1.11 Receivers. In addition to the foreclosure and other remedies granted the Association herein, each Owner, by acceptance of a deed to such Owner's Parcel, hereby conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Parcel and related Improvements, subject to the right, power and authority of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. Upon any such default the Association may, upon the expiration of thirty (30) days following delivery to the Owner of the "Notice of Lien" described herein, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described herein, (a) enter in or upon and take possession of the Parcel and the related Improvements or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Parcel and the related Improvements, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

5.1.12 Estoppel Certificate. The Association shall, within seven (7) days after written request, furnish a certificate signed by an officer or agent of the Association, setting forth the Assessments levied upon a particular Parcel which are due but unpaid. A properly executed certificate of the Association as to the status of such Assessments is binding upon the Association as of the date of the certificate's issuance.

6.

EASEMENTS AND RIGHTS OF ENTRY

6.1.1 Access. Declarant hereby creates, reserves and establishes for the benefit of the Owners reciprocal, nonexclusive easements for access, ingress and egress over all of the private streets or driveways currently existing in the Property or subsequently added to it, which easements may be conveyed by Declarant to Owners for so long as Declarant owns any interest in the Property. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by all Owners and their guests, customers, employees, patrons, tenants and invitees residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Parcel in the Property.

6.1.2 Utility Easements. Declarant reserves the right to grant additional easements and rights-of-way and transfer same over the Property to utility companies and public

agencies, as necessary, for the proper development and conveyance of the Property. Such right shall expire upon Close of Escrow for the sale of all Parcels in the Property.

6.1.3 Drainage. Declarant reserves the right to grant for the benefit of each Owner and each Parcel, non-exclusive surface and underground easements for drainage of water, storm drainage and sanitary sewer drainage from each Parcel onto or into the drainage swales, storm drains and sanitary sewers located within each of the other Parcels and over the other surface portions of the Property which are traversed by such drainage as it flows into such drainage swales, storm drains and sanitary sewers. No Owner other than Declarant may interfere with the drainage established over any portion of the Property, without the prior written consent of the Board.

6.1.4 Encroachments. Declarant reserves for its benefit and the benefit of the Owners a reciprocal easement appurtenant to each Parcel over the Property for the purpose of (i) accommodating any existing encroachment of any wall or any other authorized Improvement, and (ii) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the buildings located on a Parcel or other Improvements. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of adjoining Parcels.

7.

DECLARANT'S RIGHTS AND RESERVATIONS

7.1.1 Construction and Modification. Nothing in the Restrictions limits, and no Owner or the Association may do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Property owned solely or partially by Declarant. Declarant shall also have the right hereunder to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Property by sale, resale, lease or otherwise. Each Owner, by accepting a deed to a Parcel, hereby acknowledges that Declarant's activities may temporarily or permanently constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration does not limit Declarant's right, at any time prior to acquisition of title to a Parcel by a purchaser from Declarant, to establish on that Parcel additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may be reasonably necessary to the Property's proper development and disposal. Notwithstanding anything in this Section 7.1 to the contrary, any Improvements constructed by Declarant shall be consistent with the Design Guidelines.

7.1.2 Successors and Amendment. Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, no amendment may be made to this Article VII without the prior written approval of Declarant. Each Owner hereby grants, upon acceptance of his deed to his Parcel, an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

[7.1.3 Continued Use of Property.](#) Declarant, its successors and tenants, are entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefore.

8.

[USE RESTRICTIONS AND RESTORATION REQUIREMENTS](#)

[8.1.1 Uses Permitted.](#) Each Parcel shall be developed and used in strict compliance with the zoning and other applicable ordinances of the City and other governmental agencies having jurisdiction thereof, and any other document of record or provided to Owner.

[8.1.2 Noxious Uses.](#) Without limiting any other restrictions herein, in no event shall any improvements be constructed, placed or used on or within a Parcel, nor shall any Parcel in any event be used for, any of the following purposes: (a) airport; (b) junk yards, hazardous materials or hazardous waste disposal; (c) commercial excavation of building or construction materials, except in the usual course of construction of improvements within the Property; (d) distillation of bones; (e) dumping, disposal, incineration, or reduction of garbage, sewage, dead animals, or refuse (other than agricultural and landscape composting, and a biosolids processing facility operated by a governmental entity and specifically approved by the City or the City's Transferee); (f) stockyards and slaughter of animals; (g) refining of petroleum or any of its products; or (h) smelting of iron, tin, zinc, or other ores.

[8.1.3 Nuisances.](#) No noxious or offensive activities shall be carried out upon the Property. No Owner shall permit or cause anything to be done or kept upon the Property which will increase the rate of insurance thereon or which will obstruct or interfere with the rights of other Owners, nor will he commit or permit any nuisance on the Property, or commit or cause any illegal act to be committed thereon. Each Owner shall comply with all of the requirements of the local or state authorities and with all other governmental authorities with jurisdiction over their Parcel.

[8.1.4 Oil Drilling and Mining.](#) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted under or in the Property or any portions thereof, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the Property or any portion thereof or within five hundred (500) feet below the surface of the Property. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Property or any portion thereof.

[8.1.5 Hold Harmless and Indemnification.](#) Each Owner other than Declarant shall indemnify and hold harmless Declarant, the City, the City's Transferee, the other Owners, and the other Owners' respective occupants from and against any and all claims, losses, liabilities and expenses (including court costs and reasonable attorneys' fees) arising from or in

respect to (i) the death of, or any accident, injury, loss, or damage whatsoever caused to, the person or property of any Person as shall occur in or on the Parcel of such indemnifying Owner (except to the extent such claims, losses, liabilities and expenses shall arise from or in respect of negligence or willful misconduct of Declarant or any Owner so indemnified), and (ii) any act or omission whatsoever of the indemnifying Owner and such Owner's occupants, to the extent such act or omission involves negligence with respect to the respective Parcel of such other Owners, or any part or parts thereof or any Improvements located thereon.

8.1.6 No Exterior Storage. Except as to common trash bins or other such facilities as maintained and authorized by the Association or other endorsed trash areas, there shall be permitted no outside storage of trash or other materials of any kind.

8.1.7 Hazardous Materials. Each Owner agrees that, to the extent that any hazardous or toxic materials or wastes (as defined by the laws of any local government, the State of California and the United States) are used, stored or disposed of in and/or about any Parcel, such materials or wastes will be used, stored and disposed of in full and complete compliance with all applicable federal, state and local laws and regulations. Each Owner further agrees that it will not permit any escape of toxic or hazardous fumes or other emissions from any Parcel. Each Owner agrees to and does hereby indemnify, defend and hold harmless the City, the City's Transferee, the Association, Declarant and the other Owners from and against any and all losses, costs, claims, suits or damages (including, without limitation, attorneys' fees) arising directly or indirectly from any violation of this provision by such Owner or any tenant or occupant of such Parcel or Improvements located on the Parcel.

8.1.8 Interior Damage. Restoration and repair of any damage to the interior of any building within an individual Parcel, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the building so damaged. Such interior repair and restoration shall be completed as promptly as practical.

9.

INSURANCE

9.1.1 Fidelity Bonds. Fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, Association officers, directors, trustees, employees, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association at any given time during the term of each bond.

9.1.2 Insurance. The Board shall purchase such insurance as is reasonably necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance.

[9.1.3 Beneficiaries.](#) Such insurance shall be maintained for the benefit of the City, or the City's Transferee (as applicable), the Association, the Owners, and the Mortgagees, as their interests may appear as named insured.

[9.1.4 Notice of Expiration Requirements.](#) If available, each insurance policy the Association maintains must contain a provision that said policy may not be cancelled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board, Declarant, the City, the City's Transferee (if any), and to each Owner and Beneficiary of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be cancelled or substantially modified without thirty (30) days prior written notice to the Association, the City and the City's Transferee (if any).

[9.1.5 Insurance Premiums.](#) Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board are a Common Expense to be included in the Regular Assessments. If a particular type of business, use or special circumstance of any individual Owner is responsible for an increase in the premiums to obtain said policy or policies of insurance, the Board may require reimbursement from such Owner to compensate the Association for the higher premium payments or may levy a Special Assessment upon such Owner in the amount of the higher premium payments.

[9.1.6 Trustee for Policies.](#) The Association, acting through its Board, is trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. Unless the applicable insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Association shall maintain a record of all claims made.

[9.1.7 Actions as Trustee.](#) Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance.

10.

[RIGHTS OF MORTGAGEES](#)

[10.1.1 Mortgagee Rights.](#) Notwithstanding any other provisions in this Declaration, no amendment or violation of this Declaration shall defeat or render invalid the rights of a Mortgagee under any Mortgage upon one (1) or more Parcels made in good faith and for value, provided that after the foreclosure of any such Mortgage, such Parcels will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages on a Parcel, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provision of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based

upon one (1) vote for each Parcel encumbered by each such first Mortgage. In order to induce lenders to participate in the financing of the sale of Parcels, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):

10.1.1.1 Each Mortgagee, insurer of a Mortgage and guarantor of a Mortgage encumbering one (1) or more Parcels, upon filing a written request for notification with the Board, is entitled to written notification from the Association of:

any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including without limitation the payment of assessments or charges owed by the Owner(s) of the Parcels securing the Mortgage, which notice each Owner hereby consents to and authorizes; and

any proposed action of the Association which requires consent by a specified percentage of first Mortgagees who have submitted a written request to the Association that they be notified of such proposed action.

10.1.1.2 Each Mortgagee who obtains title to such Parcel pursuant to (i) the remedies provided in such Mortgage, (ii) foreclosure of the Mortgage, or (iii) deed or assignment in lieu of foreclosure, and any Owner who has obtained title to such Parcel from the Mortgagee or through foreclosure of the Mortgagee, is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

10.1.1.3 Each Mortgagee or other Owner who obtains title to such Parcel pursuant to the remedies provided in a first Mortgage or by foreclosure of such first Mortgage shall take title to such Parcel free and clear of any claims for unpaid assessments or charges against such Parcel which accrued prior to the time such Owner acquires title to such Parcel in accordance with Section 5.10 above.

10.1.1.4 All Mortgagees, insurers and guarantors of first Mortgages, upon written request to the Association may:

examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours;

receive written notice of all meetings of Owners;

receive all financial statements issued by the Association to its Members; and

designate in writing a representative authorized to attend all meetings of Owners.

10.1.1.5 All Mortgagees, insurers and guarantors of first Mortgages, upon written request, shall be given thirty (30) days' written notice prior to the effective date of any proposed material amendment to the Restrictions.

10.1.1.6 The Mortgagees of all first Mortgages encumbering a Parcel in the Property who have requested the Association to notify them of proposed action requiring the consent of first Mortgagees must approve any amendment to this Declaration (pursuant to Article XI) which is of a material nature, as follows:

Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages as provided in Articles IX and X hereof.

Any amendment which would require a Mortgagee after it has acquired a Parcel through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing before such foreclosure.

Any amendment which would or could result in a Mortgage being cancelled by forfeiture, or in a Parcel not being separately assessed for tax purposes.

Any amendment relating to (A) the insurance provisions in Article IX hereof.

Any amendment which would or could result in partition or subdivision of a Parcel in any manner inconsistent with this Declaration.

Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Parcel is proposed to be transferred.

No Mortgagee may unreasonably refuse to approve an amendment to the Declaration which does not adversely affect its rights or impair the value of its security.

10.1.2 Mortgagee Waiver. Upon a transfer of all or any portion of a Mortgagee's interest in and to a Mortgage secured by any Parcel, the transferring Mortgagee shall notify the Board in writing of such transfer and the name and addresses of its successor. If such transferring Mortgagee fails to so notify the Board, the consent of the new Mortgagee shall not be required for any amendment pursuant to this Declaration. If a Mortgagee of a first Mortgage receives a written request from the Board to approve the termination of the Declaration or a proposed amendment to the Declaration, but it does not deliver a negative response to the Board within thirty (30) days of the Mortgagee's receipt of such request from the Board, such Mortgagee shall be deemed to have approved the proposed termination or amendment.

11.

DURATION AND AMENDMENT

11.1.1 Duration. This Declaration shall continue in full force and effect for a period commencing on the date of recordation hereof and expiring fifty (50) years thereafter but shall be automatically extended for successive periods of twenty (20) years each unless a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 11.2 is Recorded. No severance by sale, conveyance, encumbrance or hypothecation of an interest in any Parcel from the concomitant Membership in the Association may occur as long as this Declaration continues in full force.

11.1.2 Amendment.

11.1.2.1 Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Members representing not less than seventy-five percent (75%) of the voting power of the Association, provided that the specified percentage of the Association's voting power necessary to amend a specified Section or provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision.

11.1.2.2 Each Mortgagee of a first Mortgage on a Parcel in the Property which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested is deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.

11.1.2.3 A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded in the Orange County Recorder's Office. The Certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, is conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees has been obtained.

11.1.2.4 This Declaration may only be amended with the prior written consent of the City, which shall be reflected by the signature of the Mayor and City Clerk, or their respective designees, on the certificate or amendment.

11.1.3 Protection of Declarant. Notwithstanding any other provisions of the Restrictions, until such time as Declarant no longer owns at least two hundred acres of the Property, any amendment or action requiring the approval of first Mortgagees pursuant to this

Declaration, including without limitation all amendments and action specified in Section 12.2, must first be approved in writing by Declarant.

12.

GENERAL PROVISIONS

12.1.1 Enforcement of Restrictions. All disputes arising under this Declaration, other than those described in Section 12.13, shall be subject to the following:

12.1.1.1 If the Board determines that there is a violation of the Restrictions, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Architectural Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Committee. If an Owner does not perform such corrective action as is required by the Board and the Architectural Committee within the allotted time, the Board, after Notice and Hearing, may correct the violation and assess the Owner's Parcel for all amounts expended, in accordance with the procedures set forth in Section 5.9 hereof, or may commence legal proceedings against said Owner for recovery. If the violation involves nonpayment of any type of Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures set forth in Article V.

12.1.1.2 If an Owner alleges that another Owner, its tenant, employee, invitee and licensee is violating the Restrictions (other than nonpayment of any type of Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution.

12.1.1.3 Failure to comply with any of the terms of the Restrictions by an Owner, his tenants, employees, invitees or licensees is grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof.

12.1.1.4 The Association may not incur litigation expenses, including without limitation attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings unless it has obtained the prior approval of sixty-seven percent (67%) of the Association's voting power (excluding the voting power of any Owner who would be a defendant in such proceedings) or in the case of a proceeding against Declarant, one hundred percent (100%) of the Association's voting power (excluding the voting power, if any, of Declarant or, if the proceeding is against one of the entities that comprise Declarant, excluding the voting power, if any, of said entity). Such approval is not necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article VIII hereof, (ii) enforce the architectural control provisions contained in Article IV hereof, or (iii) collect any unpaid assessments levied pursuant to this Declaration.

12.1.1.5 Without any obligation to do so, Declarant or the Board, at its option, may (i) pay any unpaid sum or settle or discharge any action therefore or judgment thereon; or (ii) provide other substitute performance of any obligations of the breaching Owner at such Owner's expense; provided, however, that nothing herein shall be construed as authorization to the Board or Declarant to enter onto the breaching Owner's Parcel to effect said substitute performance. In any such event, within five (5) calendar days after the breaching Owner's receipt of an itemized statement showing all direct expenses incurred in connection therewith, such Owner shall reimburse Declarant for all such direct expenses plus fifteen percent (15%) of such direct expenses to cover administrative and overhead expenses with respect thereto.

12.1.1.6 The Association may suspend the voting rights of a Member for any period during which any Assessment remains unpaid and delinquent and for a period not to exceed thirty (30) days from any single infraction of these Restrictions, provided that any suspension of such voting rights, except for failure to pay Assessments, shall be made by the Board only after Notice and Hearing.

12.1.1.7 The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or his tenant, employee, invitee or licensee, to comply with these Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to record a notice of noncompliance in the Orange County Recorder's Office against the Parcel owned by any Member of the Association who has violated any provision of this Declaration. The notice shall include a legal description of the Parcel and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the non-complying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to record a notice in the Orange County Recorder's Office that the noncompliance has been remedied.

12.1.1.8 Failure to enforce any provision hereof does not waive the right to enforce that provision, or any other provision hereof. No waiver by Declarant or the Board of a breach of any of the provisions of the Restrictions and no delay or failure to enforce any of the Restrictions shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other provision of the Restrictions. No waiver of any breach hereunder shall be implied from any omission to take any action on account of such breach if such breach persists or is repeated, and no express waiver shall affect a breach other than as specified in said waiver. The consent or approval by Declarant or the Board to or of any act by an Owner requiring the consent or approval of Declarant or the Board shall not be deemed to waive or render unnecessary the consent or approval of Declarant or the Board to or of any subsequent similar acts by such Owner or any other Owner.

12.1.1.9 The Board and any Owner may enforce the Restrictions as described in this Article XII. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.1.10 Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court or arbitrator, as applicable, may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and costs of court or alternative dispute resolution, as applicable, and expert witness fees, if any.

12.1.2 [\[Reserved\]](#)

12.1.3 [Severability](#). The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions hereof.

12.1.4 [Interpretation](#). This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation, use, maintenance and operation of the Property and for the maintenance of the Public Property, and any violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

12.1.5 [Mergers or Consolidations](#). Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one (1) plan. The ownership of the entire Property by the same party shall not cause the termination of this Declaration.

12.1.6 [No Public Right or Dedication](#). Nothing in this Declaration is a gift or dedication of all or any part of the Property to the public, or for any public use.

12.1.7 [Nonliability and Indemnification](#). The following provisions relating to liability and indemnification shall apply to the Board, Officers, members of the Committee and Owners:

12.1.7.1 Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the Committee by the Restrictions may be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other Association officer, employee or agent. No such person is liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such person's acts or omissions within what such person reasonably believed to be the scope of such person's Association duties ("Official Acts"), except to the extent that such injuries or damage result from

such person's willful or malicious misconduct. No such person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Property unless caused by the negligence or willful misconduct of the Association, the Board, or the Association's officers.

12.1.7.2 The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his Official Acts, provided that:

The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the Association's best interests;

In the case of a criminal proceeding, the Board determines that such person had no reasonable cause to believe his conduct was unlawful; and

In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 12.7(b) must be approved by a majority vote of a quorum consisting of members of the Board of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, or is unable to make such determination because a quorum cannot be obtained because of disqualification of members of the Board of Directors, such determination may be made by the vote or written consent of a majority of a quorum of the Members voting at a meeting called for such purpose, provided that any person to be indemnified may not vote. Payments made hereunder include amounts paid and expenses incurred in settling any such action or threatened action. This Section 12.7(b) is intended to authorize payments and indemnification to the fullest extent permitted by applicable law. The entitlement to indemnification hereunder inures to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

12.1.8 Notices. Except as otherwise provided herein, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-owners of a Parcel constitutes delivery to all co-owners. Personal delivery of such notice to any officer, partner, member or agent for the service of process on a corporation or other entity constitutes delivery to the corporation or other entity. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's

Parcel. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed from time to time and circulated to all Owners.

12.1.9 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, then the provisions of this Declaration shall prevail.

12.1.10 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Parcel or other portion of the Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property or any portion thereof.

12.1.11 Mutuality; Reciprocity; Runs With Land. This Declaration (i) is made for the direct, mutual and reciprocal benefit of each and every Parcel in the Project; (ii) shall create reciprocal rights and obligations between the respective Owners of all Parcels and their successors and assigns; (iii) shall run with the land; (iv) shall be binding upon, and inure to the benefit of each Owner and any Person having or acquiring any Parcel and any portion thereof or interest therein, and their successive owners and assigns; (v) shall be binding upon, and inure to the benefit of each Parcel and any portion thereof and interest therein; and (vi) shall create enforceable equitable servitudes.

12.1.12 Dispute Notification and Resolution Procedure (Declarant Disputes). Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, member, employee, subcontractor, contractor, design professional or agent of the Declarant (collectively, the “Declarant Parties”) arising under the Restrictions or relating to the Property shall be subject to the following provisions:

12.1.12.1 Any disputes arising under the Restrictions or otherwise between the Association, any Owner and the Declarant, or a Declarant Party (except for action taken by the Association against an Owner for delinquent Assessments) shall be resolved in accordance with subparagraph (b) below.

12.1.12.2 Any unresolved disputes under subparagraph (a) above shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641 through 645, inclusive or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant may not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by the Judicial Arbitration and Mediation Services/Endispute (“JAMS”) for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

The proceedings shall be heard in Orange County;

The referee must be a retired judge or an attorney with substantial experience in relevant real estate matters;

Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services or, if no entity is involved, by the court with appropriate jurisdiction;

The referee may require one or more pre-hearing conferences;

The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

The referee’s statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial.

12.1.13 Additional Provisions. Notwithstanding the provisions contained in the Restrictions, the Association and the Owners should be aware that there may be provisions of various laws, which may supplement or override the Restrictions. The covenants, conditions and restrictions contained herein are separate and distinct from any zoning building or other law, ordinance rule or regulation of the City or any other governmental authority having jurisdiction over the Property, which law, ordinance, rule or regulation now or in the future may contain different requirements from or in addition to those contained herein or which may prohibit uses

permitted herein or permit uses prohibited herein. In the event of any conflict between the provisions hereof and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with those covenants, conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance herewith would result in such a violation, the Board shall waive any such covenant, condition or restrictions to the extent that compliance therewith would result in such a violation, and, in connection therewith, the Board may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

12.1.14No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof.

12.1.15City and City's Transferee as Third Party Beneficiary. The City of Irvine and the City's Transferee (if any) are deemed intended third party beneficiaries and have the right, but not the obligation, to enforce the terms of this Declaration.

12.1.16No Third Parties Benefited. Subject to Section 12.15, above, nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Property or of any portion or portions thereof is by permission, and subject to control of the Owners. Notwithstanding any other provisions herein to the contrary, the Declarant may periodically restrict ingress to and egress from the Property as may reasonably be required to prevent a prescriptive easement from arising by reason of continued public use, so long as such restriction does not materially and adversely impact any access, ingress and egress to and from any Parcels within the Property.

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first written above.

a _____

By: _____

Its: _____

a _____

By: _____

Its: _____

a _____

By: _____

Its: _____

a _____

By: _____

Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public,
personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public,
personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public,
personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, Notary Public,
personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

ATTACHMENT “1”

LEGAL DESCRIPTION OF PARCEL I

That certain real property located in the City of Irvine, County of Orange, State of California more particularly described as follows:

[TO BE INSERTED]

ATTACHMENT “1”

ATTACHMENT “2”

LEGAL DESCRIPTION OF PARCEL II

That certain real property located in the City of Irvine, County of Orange, State of California more particularly described as follows:

[TO BE INSERTED]

ATTACHMENT “2”

ATTACHMENT “3”

LEGAL DESCRIPTION OF PARCEL III

That certain real property located in the City of Irvine, County of Orange, State of California more particularly described as follows:

[TO BE INSERTED]

ATTACHMENT “4”

LEGAL DESCRIPTION OF PARCEL IV

That certain real property located in the City of Irvine, County of Orange, State of California more particularly described as follows:

[TO BE INSERTED]

ATTACHMENT “5”

LEGAL DESCRIPTION OF PUBLIC PROPERTY

That certain real property located in the City of Irvine, County of Orange, State of California more particularly described as follows:

[TO BE INSERTED]

ATTACHMENT “6”

ASSESSMENT CHART

APPROVAL OF RECORDING AND SUBORDINATION BY LENDER

_____, a _____ is the Beneficiary, under that certain Deed of Trust recorded on _____, as Instrument No. _____ in the Official Records of Orange County, California, which Deed of Trust is by and between _____, a _____, as Trustor and _____ Title Insurance Company, a California corporation, as Trustee. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Property by foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration including without limitation, all easements provided for thereunder, which shall remain in full force and effect.

Dated: _____, 2003

_____,
a _____

By: _____

Its: _____

By: _____

Its: _____

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Irvine
One Civic Center Plaza
P.O. Box 19575
Irvine, California 92623

Attention: City Manager

(Space Above for Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASEMENTS**

FOR

THE IRVINE GREAT PARK

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EXHIBIT "L"

UTILITY QUITCLAIM DEED FORM

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

CITY OF IRVINE
One Civic Center Plaza
P.O. Box 19575
Irvine, CA 92623-9575
Attn: City Clerk

(Space Above Line for Recorder's Use)

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, _____, a _____, ("Grantor") does hereby remise, release and forever quitclaim to the CITY OF IRVINE, a California charter city, any and all interests (including but not limited to easements, leases, licenses, covenants, restrictions and grants of rights-of-way) in the real property more particularly described in Exhibit "L-1" hereto and by this reference incorporated herein (the "Property"), used or useful in connection with the delivery or provision of potable water, irrigation water, industrial water, wastewater, solid waste, natural gas, electric, telephone, cable television and data transmission service (the "Utility Services"), together with any pipelines, conduits, poles, valves, and other facilities, structures and other items located within the boundaries of the Property and used or useful in connection with the delivery or provision of any Utility Services to or within the Property.

In witness whereof, this instrument has been executed on _____, 200__.

[SIGNATURE BLOCK TO BE INSERTED]

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____, personally
appeared _____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

CERTIFICATE OF ACCEPTANCE

This to certify that the interest in real property conveyed by the foregoing Quitclaim Deed, from _____, to the City of Irvine ("City") is hereby accepted by the undersigned officer of the City, on behalf of the City, pursuant to authority conferred by Resolution No. ____ adopted by the City on _____, and the grantee, City, consents to the recordation thereof by its undersigned duly authorized officer.

CITY OF IRVINE

By: _____

Its: _____

ATTEST:

City Clerk

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____,
personally appeared _____, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT "L-1"

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Irvine, County of Orange, State of California,
legally described as follows:

[To be inserted]

EXHIBIT "M"

ASSIGNMENT OF LEASES

RECORDED AT THE REQUESTED OF AND
WHEN RECORDED RETURN TO

CITY OF IRVINE
City Hall
One Civic Center Plaza
P. O. Box 19575
Irvine, CA 92623-9525
Attn: City Manager

(Space Above Line for Recorder's Use)

THIS ASSIGNMENT OF LEASES (this "Assignment") is made as of _____, 200__, by _____, a _____ ("Assignor"), to and in favor of the CITY OF IRVINE, a charter municipal corporation ("Assignee").

W I T N E S S E T H

A. Assignor has purchased a portion of the former USMCAS El Toro, and wishes to develop that property in accordance with the "Overlay" land use designations established by the Great Park Plan approved by Assignee through the adoption of Resolution ____ on May 23, 2003, amending the Irvine General Plan.

B. In order to develop in accordance with the "Overlay Plan," Assignor is required to enter into a Development Agreement with Assignee, in the form approved by Assignee by the Assignee's adoption of Ordinance No. ____ on June ____, 2003 (the "Development Agreement"). The Development Agreement sets forth certain dedication and financial contribution obligations by Assignor in exchange for Assignor's right to develop with enhanced development rights. In particular, section 8.8 of such Development Agreement requires Assignor to enter into this Assignment with the City, rather than conveying property pursuant to a grant deed, for each parcel of land that Assignor is required under the Development Agreement to convey to Assignee, if Assignor received the parcel under a "Lease in Furtherance of Conveyance" ("LIFOC") from the United States Department of Navy ("Navy").

C. Assignor desires to execute and deliver to Assignee this Assignment for the purpose of conveying to Assignee portions of land within the former USMCAS El Toro that Assignor received from Navy by means of a LIFOC, assigning all right, title and interest of Assignor in any and all LIFOCs entered into between Assignor and Navy over property that Assignor is required to dedicate or otherwise convey to the City pursuant to the Development Agreement.

ARTICLE 1 DEFINITIONS

Section 1.1 Defined Terms and Rules of Construction All capitalized terms used herein shall have the meaning of the same defined terms set forth in the Development Agreement. Article and Section captions used in this Assignment are for convenience only and shall not affect the construction of this Assignment. The words “Assignor”, “Assignee”, and “lessee”, wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case.

No rules of construction against the drafter of this Assignment shall apply in any interpretation or enforcement of this Assignment, any documents or certificates executed pursuant hereto, or any provisions of any of the foregoing.

ARTICLE 2 TERMS AND CONDITIONS

Section 2.1 Assignment of Leases. Assignor hereby absolutely, unconditionally and irrevocably assigns, transfers, and conveys to Assignee all of Assignor’s right, title and interest in and to each and all of the LIFOCs set forth in Exhibit “A” and incorporated herein by this reference (the “Leases”).

Section 2.2 Enforcement of Assignment. Assignor does hereby empower Assignee, its agents or attorneys whether or not there has been any event of default or breach under the Development Agreement, to collect, sue for, settle, compromise and give acquittances for all of the rents that may become due under any and all subleases under the Leases, and avail itself of and pursue all remedies for the enforcement of the Leases and any and all subleases, and Assignor’s rights in and under the Leases and all any subleases as Assignor might have pursued but for this Assignment.

Section 2.3 Lease Warranties. Assignor warrants that:

(a) The Leases are in full force and effect, and that the copies thereof heretofore delivered to Assignee are true and correct copies;

(b) Assignor has not heretofore assigned or pledged the same or any interest therein, and no default exists on the part of any of the lessees under the Leases (collectively, the “Lessee”), or Assignor, as lessor, in the performance on the part of either Assignor or Lessees, of the terms, covenants, provisions or agreements in the Leases;

(c) No rent has been paid by any of the Lessees for more than one month in advance, and that the payment of none of the rents to accrue under the Leases has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor directly or indirectly by assuming any Lessee’s obligations with respect to other premises; and

(d) No security deposit has been made by Lessees under any of the Leases, except as reported to Assignee in writing.

Section 2.4 **Transfer of Conveyance Deed Rights Upon Expiration of LIFOCs.** Assignor absolutely, unconditionally and irrevocably covenants that, within ten calendar days following the date on which any of the Leases set forth in Exhibit "A" hereto expires or terminates, and/or Navy or an affiliate agency of the United States Government, executes and delivers to Assignor a deed conveying the real property covered by that Lease, Assignor shall execute and deliver to Assignee a Grant Deed substantially in the form set forth in Exhibit "I" to the Development Agreement, conveying the property covered by the Lease in fee to Assignee.

ARTICLE 3 **MISCELLANEOUS**

Section 3.1 **Extension and Renewals of Leases.** This Assignment shall include any extensions and renewals of the Leases and any subleases or assignments of the Leases, and any reference herein to the Leases shall be construed as including any such extensions, renewals, subleases and assignments.

Section 3.2 **No Third Parties Benefited.** This Assignment is made for the purpose of defining and setting forth certain obligations, rights and duties of Assignor and Assignee, and is made for the protection of Assignee. There are no third party beneficiaries under this Assignment.

Section 3.3 **Notices.** All notices, demands, or other communications under this Assignment shall be in writing and shall be deemed to have been given and/or received: (i) upon delivery if personally delivered; (ii) three days after deposited in the United States Mail, postage pre-paid, by certified or registered mail; or (iii) on the next business day after deposit with a nationally recognized overnight delivery service marked for delivery the next business day, addressed to the party for whom it is intended at its address hereinafter set forth:

If to Assignee: City of Irvine
 City Hall
 One Civic Center Plaza
 Irvine, CA 92623-9525
 Attn: City Manager

With a copy to: Rutan & Tucker LLP
 611 Anton Boulevard
 14th Floor
 Costa Mesa, CA 92626
 Attn: Joel D. Kuperberg

If to Assignor: _____

Attn: _____

With a copy to: _____

Attn: _____

Any party may designate a change of address by written notice to the others, given at least ten (10) days before such change of address is to become effective.

Section 3.4 **Attorney's Fees and Expenses; Enforcement.** Assignor shall pay immediately, without notice or demand, all costs and expenses in connection with the enforcement of Assignee's rights under this Assignment, including without limitation, reasonable attorneys' fees, whether or not any suit is filed in connection with such enforcement, such costs and expenses incurred by Assignee in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving Assignor, which in any way affects the exercise by Assignee of its rights and remedies under this Assignment, together with interest thereon until paid at the rate of interest applicable to the principal balance of the Note as specified therein.

Section 3.5 **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of Assignor, Assignee, and their respective successors and permitted assigns.

Section 3.6 **Time.** **TIME IS OF THE ESSENCE** of each and every term of this Assignment.

Section 3.7 **Governing Law.** This Assignment shall be governed by, and construed and enforced in accordance with the laws of the State of California. Assignor and all persons obligated to Assignee under this Assignment consent to the jurisdiction of the Superior Court of the State of California for the County of Orange, or the United States District Court for the Central District of California, Santa Ana Division, and waive any right to change of venue or removal of the case to another jurisdiction.

Section 3.8 **Entire Agreement.** This Assignment and the Development Agreement embody the final, entire agreement among the Parties hereto and supersede any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the Parties hereto. There are

no unwritten oral agreements among the Parties hereto. The Assignment shall not be modified except by written instrument executed by all Parties.

Section 3.9 **Counterparts**. This Assignment, and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all such counterparts together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date written above.

“Assignor”

By: _____

Its: _____

By: _____

Its: _____

CERTIFICATE OF ACCEPTANCE

This to certify that the interest in real property conveyed by the foregoing Assignment of Leases, from _____, to the City of Irvine ("City") is hereby accepted by the undersigned officer of the City, on behalf of the City, pursuant to authority conferred by Resolution No. ____ adopted by the City on _____, and City consents to the recordation thereof by its undersigned duly authorized

CITY OF IRVINE

By: _____

Its: _____

ATTEST:

City Clerk

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

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